

**BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA**

IN RE TEST CLAIM ON:

Penal Code Sections 290 and 290.4
Statutes 1996, Chapters 908 and 909;
Statutes 1997, Chapters 17, 80, 817, 818, 819,
820, 821 and 822; Statutes 1998, Chapters 485,
550, 927, 928, 929 and 930

Filed on December 30, 1997 and Amended on
July 14, 1999;

By County of Tuolumne, Claimant.

97-TC-15

*Sex Offenders: Disclosure by Law
Enforcement Officers*

ADMINISTRATIVE RECORD

I HEREBY CERTIFY that each of the following documents is a true and correct copy of the corresponding documents contained in the administrative record of the Commission on State Mandates for the *Sex Offenders: Disclosure by Law Enforcement Officers* Test Claim, except for two documents, noted by asterisk (*), that were reprinted and replaced to improve the readability of the documents.

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I further certify that the above-listed documents constitute the record of the original administrative proceedings before the Commission on State Mandates on the *Sex Offenders: Disclosure by Law Enforcement Officers* test claim.

Dated: April 14, 2005


 Paula Higashi, Executive Director

Assembly Bill No. 2851

CHAPTER 316

An act to amend Section 17581.5 of the Government Code, relating to local mandate reimbursement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 2004. Filed with
Secretary of State August 25, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2851, Laird. Budget Act: state mandates.

(1) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

Existing statutory law provides that a school district may not be required to implement or give effect to a statute imposing a state mandate for a specified period if it is identified by the Legislature in the Budget Act as being suspended. Existing law provides that this suspension provision is applicable only to specified mandates.

This bill would additionally make this suspension provision applicable to state mandates relating to certain investment reports and county treasury oversight committees.

(2) Existing law provides that the Commission on State Mandates shall not find costs to be mandated by the state if, among other things, the local agency or school district has authority to levy charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Existing law, the Surface Mining and Reclamation Act of 1975, requires local agencies, within 12 months of receiving mineral information and of being designated an area of statewide or regional significance, and in accordance with state policy, to establish mineral resource management policies in their general plans. Existing law also authorizes these local agencies to impose a fee upon mining operations to cover the reasonable costs incurred in implementing the act.

This bill would state that the Legislature finds and declares that the act no longer imposes a reimbursable mandate under these provisions because local agencies subject to the act have authority to levy fees to pay for the cost of the program mandated by the act.

(3) The Budget Act of 2003 provides that state-mandated local programs relating to, among others, Democratic Party presidential delegates, election materials, and specified county social services are suspended during the 2003–04 fiscal year.

This bill would state that the Legislature finds and declares that specified statutes relating to Democratic Party presidential delegates and certain county social services no longer constitute reimbursable mandates under Section 6 of Article XIII B of the California Constitution because they have been repealed.

(4) This bill also would direct the Commission on State Mandates, by January 1, 2006, to reconsider whether specified statutes continue to constitute reimbursable mandates in light of federal statutes enacted and federal and state court decisions rendered since enactment of these mandates.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district may not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

(1) The School Bus Safety I (CSM-4433) and II (97-TC-22) mandates (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

(3) Investment reports (96-358-02; and Chapter 783 of the Statutes of 1995 and Chapters 156 and 749 of the Statutes of 1996).

(4) County treasury oversight committees (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

SEC. 2. The Legislature hereby finds and declares that, notwithstanding a prior determination by the Board of Control, acting as the predecessor agency for the Commission on State Mandates, and pursuant to subdivision (d) of Section 17556 of the Government Code, the state-mandated local program imposed by Chapter 1131 of the Statutes of 1975 no longer constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because subdivision (e) of Section 2207 of the Public Resources Code, as added by Chapter 1097 of the Statutes of 1990, confers on local agencies subject to that mandate authority to levy fees sufficient to pay for the mandated program.

SEC. 3. Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

(a) Sex offenders: disclosure by law enforcement officers (97-TC-15; and Chapters 908 and 909 of the Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822 of the Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930 of the Statutes of 1998).

(b) Extended commitment, Youth Authority (98-TC-13; and Chapter 267 of the Statutes of 1998).

(c) Brown Act Reforms (CSM-4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

(d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

SEC. 4. The Legislature hereby finds and declares that the following statutes no longer constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because provisions containing the reimbursable mandate have been repealed:

(a) Democratic Party presidential delegates (CSM-4131; and Chapter 1603 of the Statutes of 1982 and Chapter 8 of the Statutes of 1988, which enacted statutes that were repealed by Chapter 920 of the Statutes of 1994).

(b) Short-Doyle case management, Short-Doyle audits, and residential care services (CSM-4238; and Chapter 815 of the Statutes of 1979, Chapter 1327 of the Statutes of 1984, and Chapter 1352 of the Statutes of 1985, which enacted statutes that were repealed by Chapter 89 of the Statutes of 1991).

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary statutory changes to fully implement the Budget Act of 2003 at the earliest possible time, it is necessary that this act take effect immediately.



AMENDED NOTICE AND AGENDA (Revised on February 13, 1998)

COMMISSION ON STATE MANDATES

Public Hearing
State Capitol, Room 437
Sacramento, California

February 26, 1998

9:30 a.m. - Closed Executive Session

10:00 a.m. - Public Session

I. CALL TO ORDER AND ROLL CALL

II. CLOSED EXECUTIVE SESSION

Consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(1):

Statement of Decision Regarding the Determination of
Plaintiffs/Petitioners' Entitlement to Attorney Fees, in the matter of
Stephen Pincus et al. v. California Commission on State Mandates,
Alameda County and Board of Supervisors of the County et al.,
San Francisco County Superior Court No. 972504, Re Alameda
County's First SB 1033 Application

III. PROPOSED CONSENT CALENDAR (Items 1, 2, and 3, below)

A. APPROVAL OF MINUTES (action)

Item 1 Hearing of January 29, 1998

B. FINDINGS OF DISPUTED TEST CLAIMS (action)

Item 2 1. *School Crimes Reporting II* - CSM -97-TC-03
San Diego Unified School District, Claimant
Penal Code Sections 628.2 and 628.6
Chapter 759, Statutes of 1992
Chapter 410, Statutes of 1996
Title 5, California Code of Regulations Sections 700-704

2. *Property Tax Shift From Local Governments To Educational
Revenue Augmentation Fund ("ERAF")* - CSM - 97-TC- 04
County of Sonoma et al, Co-Claimants
Revenue & Taxation Code sections 95, et seq; 95.1, et seq.; 97.01 et
seq.; 97.03; 97.035; and 97.038; Education Code section 41204.5
Chapter 699, Statutes of 1992; Chapter 700, Statutes of 1992; Chapter
703, Statutes of 1992; Chapter 1369, Statutes of 1992; Chapter 66,
Statutes of 1993; Chapter 68, Statutes of 1993; Chapter 130, Statutes
of 1993; Chapter 904, Statutes of 1993; Chapter 905, Statutes of 1993;
Chapter 906, Statutes of 1993; and Chapter 1279, Statutes of 1993

3. *Law Enforcement Racial and Cultural Diversity Training*

CSM - 97-TC-06

County of Los Angeles, Claimant

Chapter 1267, Statutes of 1992

Penal Code Section 13519.4

4. *Sexual Harassment Training in the Law Enforcement Workplace*

CSM - 97-TC-07

County of Los Angeles, Claimant

Penal Code Section 13519.7

Chapter 126, Statutes of 1993

5. *Educational Services Plan for Expelled Pupils* - 97-TC-09

Kern County Superintendent of Schools, Claimant

Education Code Sections 48915, 48916, 48916.1, 48926

Chapter 1052, Statutes of 1996 et al

6. *Very High Fire Hazard Severity Zones* - CSM - 97-TC-13

City of Redding, Claimant

Government Code Sections 51175 through 51187, 13132.7

Health and Safety Code Section 13108.5

Chapter 1188, Statutes of 1992

Chapter 843, Statutes of 1994

Chapter 333, Statutes of 1995

7. *Sex Offenders: Disclosure by Law Enforcement Officers*

CSM - 97-TC-15

County of Los Angeles, Claimant

Penal Code Sections 290 and 290.4

Chapter 908, Statutes of 1996

8. *School Bus Safety II* - CSM - 97-TC-22

Clovis Unified School District, Claimant

Education Code Sections 39831.3, 38048, 39831.5

Vehicle Code Section 22112

Chapter 739, Statutes of 1997 et al

C. ADOPTION OF STATEWIDE COST ESTIMATES (action)

Item 3

Crime Victims Rights - CSM-96-358-01

County of Santa Clara, Claimant

Penal Code Section 679.02 (a)(12)(A), (B) and (C)

Chapter 411, Statutes of 1995, Sections 1 and 2

Fiscal Years 1995-96 through 1998-99

IV. EXECUTIVE DIRECTOR'S REPORT AND NEXT AGENDA (information only)

- Item 4 Update on Legislative Proposals
1998 Rulemaking Calendar and Sunset Review of Regulations

V. APPROVAL OF COMMISSION ORDERS TO INITIATE RULEMAKING (action)

- Item 5 Adopt new regulations on Election of Officers, Duties of Chairperson,
and Designation of Default Rules
Amend existing Conflict of Interest Code to include staff counsel as
designated employee (Appendix to Section 1189.10)
Amend applicable sections of Article 6.5, Applications For A Finding
of Significant Financial Distress to conform with current law

VI. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF
REGULATIONS, TITLE 2, CHAPTER 2.5, Article 7

A. INCORRECT REDUCTION CLAIM (action)

- Item 6 *Underground Storage Tanks* - CSM - 4381
City of Los Angeles, Claimant
Health and Safety Code Section 25150.1 et seq.
Chapter 23, CCR, Chapter 3, Subchapter 16,
Chapter 1046, Statutes of 1983

B. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES (action)

- Item 7 *Threats Against Peace Officers* - CSM-96-365-02
County of San Diego, Claimant
Penal Code Section 832.9
Chapter 1249, Statutes of 1992
Chapter 666, Statutes of 1995

C. REQUEST FOR RECONSIDERATION AND ADOPTION OF PROPOSED
STATEMENT OF DECISION (action)

- Item 8 *Domestic Violence Training and Incident Reporting* - CSM-96-362-01
County of Los Angeles, Claimant
Penal Code Sections 13519 and 13730
Chapter 965, Statutes of 1995

D. TEST CLAIMS (action)

- Item 9 *Two-Way Traffic Signal Communication* – CSM-4504
 County of Los Angeles, Claimant
 Vehicle Code Section 21401
 Chapter 1297, Statutes of 1994

<RECESS>

- Item 10 *Special Education: Ages 3, 4, and 5, Not Requiring Intensive Services*
 (RIS) CSM-3986-A, CSM-3986
 Long Beach Unified School District, Claimant
 Riverside County Superintendent of Schools et al., Claimant
(Includes Ages 3-5 Not RIS Transportation, North Region SELPA,
Claimant.)
 Chapter 797, Statutes of 1980 et al.

VII. ADJOURNMENT

Note: All back-up material and supporting documentation for this meeting are available for public inspection at the office of the Commission on State Mandates, Executive Director, 1300 I Street, Suite 950, Sacramento, California 95814; (916) 323-3562. In addition, a complete copy of the above described materials will be available for public inspection at the meeting.

If you are in need of any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission on State Mandates (916) 323-3562 at least 5-7 *working* days prior to the meeting.

See the agenda items on the Commission's Website: www.csm.ca.gov/. -- items will be uploaded approximately one week before the hearing.

COMMISSION ON STATE MANDATES

1300 I STREET, SUITE 950
SACRAMENTO, CA 95814
(916) 323-3562



February 11, 1998

TO: ALL INTERESTED PARTIES
FROM: Paula Higashi, Executive Director
RE: UPDATE

ITEMS TENTATIVELY SET FOR THE MARCH 26, 1998 HEARING

- *January 1, 1975 and Test Claim Analysis.*
- Statewide Cost Estimates: Prisoner Parental Rights, Pesticide Use Reports, Threats Against Peace Officers, Absentee Ballots (School Districts), and Investment Reports
- Test Claims: Three Strikes, Batterer's Treatment Program, Physical Performance Testing, Caregiver Affidavits, Involuntary Transfers
- Proposed Parameters and Guidelines: Domestic Violence Incident Policies and Standards

COMMISSION'S WEBSITE

February agenda and supporting documents will be available on the Commission's website approximately one week before the hearing. CSM WEBSITE ADDRESS: www.csm.ca.gov/
Within one week after each hearing, the website is updated to reflect actions taken by the Commission.

NOTICE AND AGENDA

COMMISSION ON STATE MANDATES

Commission on State Mandates
1300 I Street, Suite 950
Sacramento, California

February 27, 1998

Public Rulemaking and Informational Hearing -- 9:00 a.m.

Proposed Amendment to California Code of Regulations
Title 2, Administration; Division 2, Financial Operations,
Chapter 2.5, Commission on State Mandates

I. INTRODUCTION/OPENING STATEMENT

II. PUBLIC TESTIMONY

Any person may present oral or written statements or arguments relevant to the proposed regulatory action which is necessary to interpret, implement, and make specific the procedure for the Commission to reconsider and change a previous final decision which is contrary to law.

III. ADJOURN

Immediately following completion of oral testimony.

* * *

The Commission requests, but does not require, that persons making oral comments at the hearing submit a written copy of their testimony at the hearing.

Note: All back-up material and supporting documentation for this public hearing and rulemaking proceeding are available for public inspection at the office of the Commission State Mandates, Executive Director, 1300 I Street, Suite 950, Sacramento, CA 95814, (916) 323-3562. In addition, a complete copy of the proposed regulatory action will be available for public inspection at the hearing.

If you are in need of any special accommodations such as a sign language interpreter, an assistive listening device, materials in an alternative format, or any other accommodations, please contact the Commission on State Mandates (916) 323-3562 at least 5-7 *working* days prior to the meeting.

* * * *

Parameters and Guidelines Workshop (Immediately following the hearing)

Commission staff will meet with interested parties to continue discussions on Standard Provisions of Parameters and Guidelines. The workshop will adjourn by 12 noon.

Hearing Date: February 26, 1998

File Number:

Staff: Commission Staff

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Item 2

Finding of Disputed Test Claims

Executive Summary

Subdivision (a) of section 17553 of the Government Code requires the Commission to "ensure that a statewide cost estimate is adopted within 18 months of receipt of a test claim or six months after an undisputed test claim, except for any extensions or postponements by the claimant, or if incomplete information is submitted by the claimant, when a determination is made by the commission that a mandate exists."

The Commission's regulations define an "undisputed test claim" as "a completed test claim ... that has not been opposed, in whole or in part, by the State Department of Finance, the State Controller, any other affected state agency ... the commission, or interested party." (§ 1181.1 (q).)

The Department of Finance and one other state agency have notified the Commission of their opposition and intent to oppose, at least in part, the findings of a reimbursable mandate in the statutes which form the basis of the test claims listed on the following pages. (See attached letters.)

Staff Recommendation

Therefore, staff recommends the Commission find the test claims listed on the following pages to be *disputed* for purposes of the timelines established under subdivision (a) of section 17553 of the Government Code and the Commission's regulations.

TITLE	PAGE NO.
1. <i>School Crimes Reporting II</i> - CSM -97-TC-03 San Diego Unified School District, Claimant Penal Code Sections 628.2 and 628.6 Chapter 759, Statutes of 1992 Chapter 410, Statutes of 1996 Title 5, California Code of Regulations Sections 700-704	0005
2. <i>Property Tax Shift From Local Governments To Educational Revenue Augmentation Fund ("ERAF")</i> - CSM - 97-TC- 04 County of Sonoma et al, Co-Claimants Revenue & Taxation Code sections 95, et seq; 95.1, et seq.; 97.01et seq.; 97.03; 97.035; and 97.038; Education Code section 41204.5 Chapter 699, Statutes of 1992; Chapter 700, Statutes of 1992; Chapter 703, Statutes of 1992; Chapter 1369, Statutes of 1992; Chapter 66, Statutes of 1993; Chapter 68, Statutes of 1993; Chapter 130, Statutes of 1993; Chapter 904, Statutes of 1993; Chapter 905, Statutes of 1993; Chapter 906, Statutes of 1993; and Chapter 1279, Statutes of 1993	0009
3. <i>Law Enforcement Racial and Cultural Diversity Training</i> CSM - 97-TC-06 County of Los Angeles, Claimant Chapter 1267, Statutes of 1992 Penal Code Section 13519.4	0013
4. <i>Sexual Harassment Training in the Law Enforcement Workplace</i> CSM - 97-TC-07 County of Los Angeles, Claimant Penal Code Section 13519.7 Chapter 126, Statutes of 1993	0019
5. <i>Educational Services Plan for Expelled Pupils</i> - 97-TC-09 Kern County Superintendent of Schools, Claimant Education Code Sections 48915, 48916, 48916.1, 48926 Chapter 1052, Statutes of 1996 et al	0023
6. <i>Very High Fire Hazard Severity Zones</i> - CSM - 97-TC-13 City of Redding, Claimant Government Code Sections 51175 through 51187, 13132.7 Health and Safety Code Section 13108.5 Chapter 333, Statutes of 1995 Chapter 843, Statutes of 1994 Chapter 1188, Statutes of 1992	0029

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|---|------|
| 7. <i>Sex Offenders: Disclosure by Law Enforcement Officers –</i> | 0037 |
| CSM - 97-TC-15 | |
| County of Los Angeles, Claimant | |
| Penal Code Sections 290 and 290.4 | |
| Chapter 908, Statutes of 1996 | |
|
 | |
| 8. <i>School Bus Safety II - CSM - 97-TC-22</i> | 0041 |
| Clovis Unified School District, Claimant | |
| Education Code Sections 39831.3, 38048, 39831.5 | |
| Vehicle Code Section 22112 | |
| Chapter 739, Statutes of 1997 et al | |
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DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706

RECEIVED

FEB - 2 1998

COMMISSION ON
STATE MANDATES

January 28, 1998

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms Higashi:

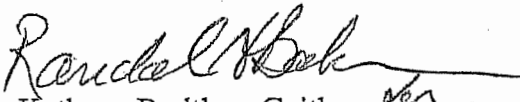
As requested in your letter of December 29, 1997 the Department of Finance has reviewed the test claim submitted by the San Diego Unified School District (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 410, Statutes of 1996, (SB 822, Dills), are reimbursable state mandated costs (Claim No. CSM-97-TC-03 "School Crimes Reporting II"). Commencing with page 3, Section B, of the test claim, claimant has identified new duties which it asserts are reimbursable state mandates.

As the result of our review, we have concluded that we are unable to provide a recommendation on the merits of the claim at this time. Accordingly, pursuant to Section 1183.01(b)1 of the Commission's regulations, we are responding within 40 days of receipt of your letter to advise you that, at this time, we intend to oppose the finding of a reimbursable mandate in the statute(s) which forms the basis of this claim and request that the Commission find the claim to be "disputed" for the purposes of the timelines in the Section. Accordingly, this letter constitutes our request for an extension of time for good cause to file our opposition to the claim. We believe that the fact that the number of complexity of the issues raised and number of various authorities that the issues are based upon satisfies the "good cause" criterion on Section 1181.1(g)(1) of the Commission's regulations. That Section defines "good cause" as "Good cause" may include, but is not limited to the following factors: (1) the number of complexity of the issues raised; (2) whether a party is new to the case, or the necessity for other counsel; (3) whether the individual responsible for preparing the document has other time-limited commitments during the affected period; (4) whether the individual responsible for appearing at the hearing has other time limited commitments; (5) illness of a party; (6) a personal emergency; (7) a planned vacation which cannot reasonably be rearranged and/or which was not reasonably expected to conflict with the due date; (8) a pending public records request; and (9) any other factor which in the context of a particular claim constitutes good cause. Good cause may be established by a specific showing of other obligations involving deadlines which, as a practical matter, preclude filing the document by the due date without impairing quality. If the Commission makes a finding that the claim is disputed, we would plan to submit our filing within 139 days from the date the test claim was filed, or no later than May 11, 1998, as required by Section 1183.01(b)1 of the Commission's regulations.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your December 29, 1997 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Caryn Becker, Principal Program Budget Analyst at (916) 445-0328 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,


Kathryn Radtkey-Gaither
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: "School Crimes Reporting II"

Test Claim Number: CSM-97-TC-03

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On January 28, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates

Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

E-8

Department of Education
School Business Services
Attention: Marie Johnson
560 J Street, Suite 170
Sacramento, CA 95814

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

San Diego Unified School District
Attention: James Cunningham
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

E-8

California Teachers Association

State Board of Education
Attention: Bill Lucia, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

Wellhouse & Associates
Attention: David Wellhouse
9175 Kiefer Blvd., Suite 121
Sacramento, CA 95826

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 28, 1998 at Sacramento, California.



Amy Cooper

DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706

February 6, 1998

RECEIVED

FEB 06 1998

COMMISSION ON
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of January 8, 1998, the Department of Finance has reviewed the test claim submitted by Sonoma County (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 699, Statutes of 1992, (SB 617), et al., are reimbursable state mandated costs (Claim No. CSM-97-TC-04, Property Tax Shift From Local Governments To Educational Revenue Augmentation Fund [ERAF]). Commencing with Section IV, page 22, of the test claim, the claimant has identified the following new duties, which it asserts are reimbursable state mandates:

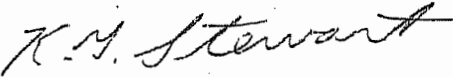
- "The Shift of Local Property Tax Revenues to ERAFs to Meet the State's Obligation to Fund Schools Under Proposition 98 Imposed a New Program or Higher Level of Service on Local Governments."
- "The Shift of Local Property Tax Revenues to ERAFs Imposed a Cost on Local Governments that must be retained under Section 6."

Pursuant to Section 1183.01(b)1 of the Commission's regulations, we are responding within 40 days of the filing date to advise you that we intend to oppose the finding of a reimbursable mandate in the statutes which form the basis of this claim and request that the Commission find the claim to be "disputed" for the purposes of the timelines in the Section. If the Commission makes a finding that the claim is disputed, we would plan to submit our filing within 139 days from the date the test claim was filed, or no later than May 27, 1998, as required by Section 1183.01(b)1 of the Commission's regulations.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 8, 1998, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Pedro R. Reyes, Principal Program Budget Analyst, at (916) 445-6423 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



for Stan Cubanski
Program Budget Manager

Attachment

PROOF OF SERVICE

Test Claim Name: Property Tax Shift From Local Governments To Educational Revenue Augmentation Fund

Test Claim Number: CSM-97-TC-04

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California; I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, Ninth Floor, Sacramento, CA 95814.

On February 6, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and non-state agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, Ninth Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service

C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor/Controller/Recorder
Attention: Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415-0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Ms. Carol Berg, Ph.D.
Education Mandated Cost Network
1121 L Street, Suite 1060
Sacramento, CA 95814

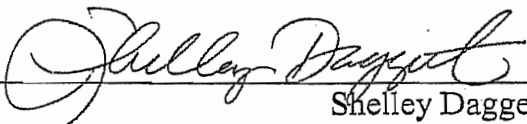
Ms. Maria Johnson
Department of Education
Fiscal Policy Division
560 J Street, Suite 170
Sacramento, CA 95814

Sonoma County
County Counsel
575 Administration Drive, #105A
Santa Rosa, CA 95403-2881

Mr. James P. Botz
County Counsel
575 Administration Drive, #105A
Santa Rosa, CA 95403-2881

Mr. Paul Minney, Interested Party
Girard & Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 6, 1998, at Sacramento, California.


Shelley Daggett



DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706

February 6, 1998

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

FEB 10 1998

COMMISSION ON
STATE MANDATES

Dear Ms. Higashi:

As requested in your letter of January 12, 1998 the Department of Finance has reviewed the test claim submitted by Los Angeles County (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 1267, Statutes of 1992, (AB 401, Epple), are reimbursable state mandated costs (Claim No. CSM-97-TC-06 "Law Enforcement Racial and Cultural Diversity Training"). Commencing with page 1, of the test claim, claimant contends that the addition of subdivisions (b) and (c) to Penal Code Section 13519.4 by Chapter 1267/92 has resulted in new duties for law enforcement agencies, which it asserts are reimbursable state mandates. Those subdivisions require that the course of basic training for law enforcement officers include no later than August 1, 1993 adequate instruction on racial and cultural diversity in order to foster mutual respect and cooperation between law enforcement and members of all racial and cultural groups and define the terms "culturally diverse" and "cultural diversity".

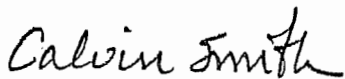
As the result of our review, we have concluded that we are unable to provide a recommendation on the merits of the claim at this time. Accordingly, pursuant to Section 1183.01(b)1 of the Commission's regulations, we are responding within 40 days of receipt of your letter to advise you that, at this time, we intend to oppose the finding of a reimbursable mandate in the statute which forms the basis of this claim and request that the Commission find the claim to be "disputed" for the purposes of the timelines in the Section 1183.01 of those regulations. Accordingly, this letter constitutes our request for an extension of time for good cause to file our opposition to the claim. We believe that the fact that the issues raised in the claim require additional research which cannot be completed prior to February 11, 1998, the date by which you requested our initial written response to your January 12, 1998 letter, satisfies the "good cause" criterion in Section 1181.1(g)1 of the Commission's regulations. That Section defines "good cause" as including, but not being limited to, the following factors: (1) the number of complexity of the issues raised; (2) whether a party is new to the case, or the necessity for other counsel; (3) whether the individual responsible for preparing the document has other time-limited commitments during the affected period; (4) whether the individual responsible for appearing at the hearing has other time limited commitments; (5) illness of a party; (6) a personal emergency; (7) a

planned vacation which cannot reasonably be rearranged and/or which was not reasonably expected to conflict with the due date; (8) a pending public records request; and (9) any other factor which in the context of a particular claim constitutes good cause. Good cause may be established by a specific showing of other obligations involving deadlines which as a practical matter preclude filing the document by the due date without impairing quality. If the Commission makes a finding that the claim is disputed, we would plan to submit our filing within 139 days from the date the test claim was filed, or no later than May 12, 1998, as required by Section 1183.01(b)1 of the Commission's regulations.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 12, 1998 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst at (916) 445-8913 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



S. CALVIN SMITH
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: "Law Enforcement Racial and Cultural Diversity Training"

Test Claim Number: CSM-97-TC-06

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On February 6, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Mallèy
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service

C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention : Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

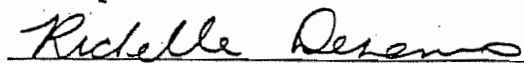
P-8

Mr. Glen Fine, Assistant Executive Director
Commission On Peace Officer Standards and
Training
1601 Alhambra Blvd.
Sacramento, CA 95816-7083

Mr. Paul Minney
Girard and Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

Mr. Steve Smith, CEO
Mandated Cost Systems
2275 Watt Avenue, Suite C
Sacramento, CA. 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 6, 1998 at Sacramento, California.


Richelle Deremo

icc: SMITH, MILLER, FOREMAN, MILLS, APPS, WADDELL, FILE

CJ:CORR,CSM97TC06.JAF

Mr. Paul Minney
Girard and Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

Mr. Steve Smith, CEO
Mandated Cost Systems
2275 Watt Avenue, Suite C
Sacramento, CA. 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 6, 1998 at Sacramento, California.

Richelle Deremo
Richelle Deremo



DEPARTMENT OF FINANCE
915 L STREET
SACRAMENTO, CA 95814-3706

RECEIVED

FEB 09 1998

STATE OF CALIFORNIA
DEPARTMENT OF FINANCE

February 6, 1998

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of January 12, 1998 the Department of Finance has reviewed the test claim submitted by Los Angeles County (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 126, Statutes of 1993, (SB 459, Boatwright), are reimbursable state mandated costs (Claim No. CSM-97-TC-07 "Sexual Harassment Training in the Law Enforcement Workplace"). Commencing with page 1 of the test claim, claimant contends that the addition of Section 13519.7 of the Penal Code by Chapter 126/93 has resulted in new duties for law enforcement agencies, which it asserts are reimbursable state mandates. That code section requires the Commission on Peace Officer Standards and Training to develop by August 1, 1994 complaint guidelines to be followed by city police departments, county sheriffs' departments, districts, and state university departments, for peace officers who are victims of sexual harassment in the workplace.

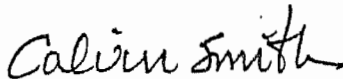
As the result of our review, we have concluded that we are unable to provide a recommendation on the merits of the claim at this time. Accordingly, pursuant to Section 1183.01(b)1 of the Commission's regulations, we are responding within 40 days of receipt of your letter to advise you that, at this time, we intend to oppose the finding of a reimbursable mandate in the statute(s) which forms the basis of this claim and request that the Commission find the claim to be "disputed" for the purposes of the timelines in the Section. Accordingly, this letter constitutes our request for an extension of time for good cause to file our opposition to the claim. We believe that the fact that the issues raised in the claim require additional research which cannot be completed prior to February 11, 1998, the date by which you requested our initial response to your January 12, 1998 letter satisfies the "good cause" criterion on Section 1181.1(g)1 of the Commission's regulations. That Section defines "good cause" as including, but not being limited to, the following factors: (1) the number of complexity of the issues raised; (2) whether a party is new to the case, or the necessity for other counsel; (3) whether the individual responsible for preparing the document has other time-limited commitments during the affected period; (4) whether the individual responsible for appearing at the hearing has other time limited commitments; (5) illness of a party; (6) a personal emergency; (7) a planned vacation which cannot reasonably be rearranged and/or which was not reasonably expected to conflict with the due date; (8) a pending public records

request; and (9) any other factor which in the context of a particular claim constitutes good cause. Good cause may be established by a specific showing of other obligations involving deadlines which as a practical matter preclude filing the document by the due date without impairing quality. If the Commission makes a finding that the claim is disputed, we would plan to submit our filing within 139 days from the date the test claim was filed, or no later than May 14, 1998, as required by Section 1183.01(b)1 of the Commission's regulations.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 12, 1998 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst at (916) 445-8913 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

A handwritten signature in cursive script that reads "Calvin Smith".

S. CALVIN SMITH
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: "Sexual Harassment Training in the Law Enforcement Workplace"
Test Claim Number: CSM-97-TC-07

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On February 6, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service
C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention : Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

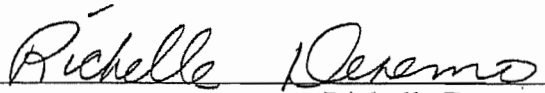
Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

P-8
Mr. Glen Fine, Assistant Executive Director
Commission on Peace Officer Standards and
Training
1601 Alhambra Blvd.
Sacramento, CA 95816-7083

Mr. Paul Minney
Girard & Vinson
1676 California Blvd., Suite 450
Walnut Creek, CA 94596

Mr. Steve Smith, CEO
Mandated Cost Systems
2275 Watt Avenue, Suite C
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 6, 1998 at Sacramento, California.


Richelle Deremo

STATE OF CALIFORNIA

PETE WILSON, Governor

DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706

February 9, 1998

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms Higashi:

As requested in your letter of January 9, 1998 the Department of Finance has reviewed the test claim submitted by the Kern County Superintendent of Schools (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 1052, Statutes of 1996, (AB 2720, Sweeney) et al., are reimbursable state mandated costs (Claim No. CSM-97-TC-09 "Educational Services Plan for Expelled Pupils"). Commencing with page 13, Section 1 of Part III, of the test claim, claimant has identified new duties, which it asserts are reimbursable state mandates. These new duties are pursuant to four Education Code sections and four chaptered statutes, some of which are subject to test claims CSM-96-358-03 and 03A ("Pupil Expulsions II") and as noted on page 16, Section 4 of this test claim, which are pending before the Commission on State Mandates (Commission), to date. The new duties included in this test claim are as follows:

1. Each county office of education that operates community schools, working with every school district in the county, to develop a plan specified in Education Code Section 48926 for providing education services to all expelled pupils in that county.
2. The county office governing board and each school district governing board to adopt the plan at public hearing.
3. The county superintendent of schools, in conjunction with the superintendents of the school districts, to submit to the Superintendent of Public Instruction the county plan for providing educational services to all expelled pupils in the county no later than June 30, 1997, and to submit a triennial update to the plan to the Superintendent of Public Instruction, including the outcome data pursuant to Section 48916.1, on each June 30th thereafter.

In response, Education Code section 48926 states in part "Each county superintendent of schools in counties that operate community schools pursuant to Section 1980, in conjunction with superintendents of the school districts within the county, shall develop a plan for providing education services to all expelled pupils in that county". Education Code section

- 2 -

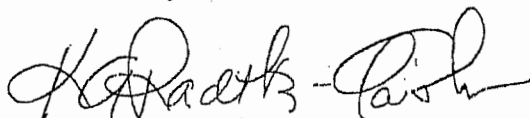
1980 states that "A county board of education *may* establish and maintain one or more community schools" (emphasis added).

Although Education Code section 48926 requires county superintendents of schools that operate community schools to develop educational services plans for expelled pupils, section 1980 clearly indicates that the establishment and operation of a community school is a discretionary act. Furthermore, Education Code section 48916.1, subdivision (f), allows a school district to enter into an agreement with another county when that school district's county superintendent of schools *is unable to serve the expelled pupils of the district*. Accordingly we believe that, because the county plan is only required for counties which have community schools, which are clearly discretionary, the activities listed in this test claim are not state-mandated, and thus are not reimbursable.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 9, 1998 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Caryn Becker, Principal Program Budget Analyst at (916) 445-0328 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



Kathryn Radtkey-Gaither
Program Budget Manager

Attachments

0024

Attachment A

DECLARATION OF CARYN BECKER
DEPARTMENT OF FINANCE
CLAIM NO. CSM-97-TC-09

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. We concur that the Chapter No. 1052, Statutes of 1996, (AB 2720, Sweeney) et al., sections relevant to this claim are accurately quoted in the test claim submitted by claimants and, therefore, we do not restate them in this declaration.
3. Attachment B is a true copy of Finance's analysis of AB 2720 prior to its enactment as Chapter No. 1052, Statutes of 1996, (AB 2720, Sweeney) et al.,.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

February 9, 1998

February 9, 1998 at Sacramento, CA

Caryn Becker

Caryn Becker

PROOF OF SERVICE

Test Claim Name: "Educational Services Plan for Expelled Pupils"

Test Claim Number: CSM-97-TC-09

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On February 9, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service

C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles

Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino

Office of Auditor / Controller / Recorder
Attention: Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates

Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Kern County Superintendent of Schools

Attention: Ken Taylor, Director for the
Division of Student Services
1300 17th Street, City Centre
Bakersfield, CA 93301-4533

PROOF OF SERVICE

Test Claim Name: "Educational Services Plan for Expelled Pupils"

Test Claim Number: CSM-97-TC-09

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On February 9, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service

C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles

Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino

Office of Auditor / Controller / Recorder
Attention : Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates

Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Kern County Superintendent of Schools

Attention: Ken Taylor, Director for the
Division of Student Services
1300 17th Street, City Centre
Bakersfield, CA 93301-4533

Education Mandated Cost Network
Attention: Carol Berg
1121 L Street, Suite 1060
Sacramento, CA 95814

San Diego City Schools
Attention: Jim Cunningham
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

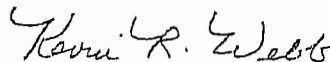
San Juan Unified School District
Attention: Diana Halpenny, General Counsel
3738 Walnut Avenue
P.O. Box 477
Carmichael, CA 95609-0477

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

Sixten & Associates
Attention: Keith B. Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mandated Cost Systems
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 9, 1998, at Sacramento, California.



Kevin Webb

DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706



February 5, 1998

RECEIVED

FEB 09 1998

COMMISSION
STATE MANDATES

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of January 8, 1998, the Department of Finance has reviewed the test claim submitted by the City of Redding (claimant) asking the Commission on State Mandates to determine whether specified activities required by Chapter 1188, Statutes of 1992 (AB 337, Bates), Chapter 843, Statutes of 1994 (AB 3819, W. Brown), and Chapter 333, Statutes of 1995 (AB 747, V. Brown), result in reimbursable state mandated costs (Claim No. CSM-97-TC-13 "Very High Fire Hazard Severity Zones"). Commencing with Page 2 of the test claim, the claimant has identified the following activities which it asserts result in reimbursable state mandated costs:

1. The adoption of a very high fire hazard severity map.
2. Preparation and adoption of the required ordinance.
3. Development of a very high fire hazard severity zone prevention program.
4. Program implementation and monitoring.
5. Program evaluation and modification.

Based on our review of the test claim, we have concluded that the statutes in question require local agencies to make information received from the California Department of Forestry and Fire Protection (CDF) on "very high fire hazard severity zones" available for public review, and may require the local agencies to ensure that the information is presented in a format that is understandable and accessible to the general public. We also find that the statutes require a local agency to adopt an ordinance designating very high fire hazard severity zones within its jurisdiction. However, we do not believe that any of the other activities described by the claimant constitute "costs mandated by the state," as those activities are optional or relate to the enforcement of a new infraction. If the Commission reaches the same conclusion at its February 26, 1998, hearing on the matter, the nature and extent of the specific activities

required of the City of Redding can be addressed in the parameters and guidelines which will then have to be developed for the program.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 8, 1998, letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service. We believe that CDF should be a party to this test claim and have added CDF to our proof of service.

If you have any questions regarding this letter, please contact Carol Baker, Principal Program Budget Analyst, at (916) 324-0043 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

A handwritten signature in cursive script, appearing to read "Fred Klass".

Fred Klass
Program Budget Manager

Attachments

DECLARATION OF STEPHEN LEHMAN
DEPARTMENT OF FINANCE
CLAIM NO. CSM-97-TC-13

1. I am currently employed by the State of California, Department of Finance (Finance), am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.
2. Government Code Section 51178 requires the Director of the Department of Forestry and Fire Protection (CDF) to identify areas in the State as "very high fire hazard severity zones" based on statewide criteria and the severity of fire hazard that is expected to prevail in those areas.
3. Government Code Section 51178.5 provides that within 30 days after receiving a transmittal from CDF that identifies very high fire hazard severity zones, a local agency shall make the information available for public review. Section 51178.5 further provides that the information be presented in a format that is understandable and accessible to the general public.
4. Government Code Section 51179, added by Chapter 1188, Statutes of 1992, provides that a local agency shall designate, by ordinance, very high fire hazard severity zones in its jurisdiction within 120 days of receiving recommendations from CDF pursuant to subdivisions (c) and (d) of Government Code Section 51178.

Section 51179 further provides that a local agency may, at its discretion, include or exclude areas in a very high fire hazard severity zone identified by CDF, based on findings supported by substantial evidence that the requirements of Government Code Section 51182 are or are not necessary for effective fire protection within the area.

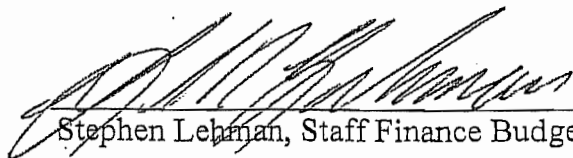
5. Government Code Section 51182 establishes that any person who owns, leases, controls, operates, or maintains any occupied dwelling or structure within a very high fire hazard severity zone designated by a local agency pursuant to Government Code Section 51179 must comply with specified requirements and standards.
6. Government Code Section 51185 provides that any violation of the requirements and conditions set forth in Government Code Section 51182 is an infraction that is punishable by a fine of not less than \$200 nor more than \$500.
7. Government Code Section 51186 provides that a local agency having jurisdiction of property upon which conditions regulated by Government Code Section 51182 are

being violated shall notify the owner of the property to correct the conditions. If the owner fails to make the necessary corrections, the local agency may cause the corrections to be made and recover its costs through the placement of a lien on the property.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

2/4/98

at Sacramento, CA



Stephen Lehman, Staff Finance Budget Analyst

PROOF OF SERVICE

Test Claim Name: "Very High Fire Hazard Severity Zones"

Test Claim Number: CSM-97-TC-13

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 9th Floor, Sacramento, CA 95814.

On February 5, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 9th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

League of California Cities
Attention: Ernie Silva
1400 K Street
Sacramento, CA 95815

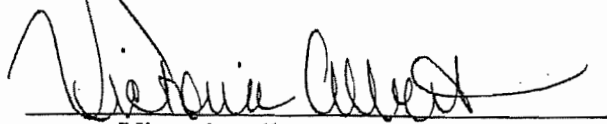
Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

Mr. Stephen W. Strong, Finance Director
City of Redding
760 Parkview Avenue
Redding, CA 96001-3396

A-45

Mr. Ronny J. Coleman
Chief Deputy Director
Department of Forestry and Fire Protection
1416 Ninth Street
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 5, 1998, at Sacramento, California.



Victoria Albert, Executive Assistant

RECEIVED

FEB 09 1998

COMMISSION ON
STATE MANDATES

Memorandum

To: Ms. Paula Hiyashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, California 95814

Date: February 5, 1998

Telephone: (916) 445-8174
CALNET: (8) 485-8174
FAX: (916) 445-8509
Internet address: www.fire.ca.gov

From: Department of Forestry and Fire Protection
OFFICE OF THE STATE FIRE MARSHAL
Administration

Subject: TEST CLAIM: VERY HIGH FIRE HAZARD SEVERITY ZONES-97-TC-13

This is in response to your request for this Department's position on the validity of subject test claim.

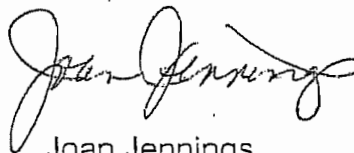
It is the position of this Department that the provisions of Chapter 1188, Statutes of 1992, do not impose mandatory requirements on local agencies. Government Code Section 51179(b) authorizes a local agency to exclude from the requirements of Section 51182 an area identified as a very high hazard severity zone by the Director of the Department of Forestry and Fire Protection (Director) following a finding supported by substantial evidence in the record that the requirements of Section 51182 are not necessary for effective fire protection within the area. Any exclusions made in this regard are final and are not rebuttable. Therefore, a local agency is not required to implement the provisions of this statute. The only requirement is a finding supported by substantial evidence that the designation of a very high fire hazard severity zone is not necessary for effective fire protection within the area designated by the Director.

In Chapter 843, Statutes of 1994, a local agency is required to make the information transmitted by the Director designating very high fire hazard severity zones available for public review. This requirement would entail minimal cost.

The ordinance for space and structure defensibility provided for in Chapter 843 is tied to the classification of roof coverings. If, in a very high fire hazard severity zone designated by a local agency, the local agency chooses to adopt an ordinance for structure and space defensibility a minimum Class B roof covering would be required in those zones. If a local agency has designated very high fire hazard severity zones and elects not to adopt an ordinance for structure and space defensibility, a Class A roof covering would be required. There is no mandate to adopt subject ordinance – there's a choice with a consequence for inaction.

Ms. Paula Hiyashi
February 5, 1998
Page Two

If you have questions or wish to discuss this further, you may contact me at
(916) 445-8174.

A handwritten signature in cursive script, appearing to read "Joan Jennings".

Joan Jennings
Chief, Fire Prevention

cc: Jerry Geissler
Steve Lehman, Dept. of Finance

DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706

RECEIVED

FEB 09 1998

COMMISSION ON
STATE MANDATES

February 6, 1998

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of January 8, 1998 the Department of Finance has reviewed the test claim submitted by the County of Tuolumne (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 908, Statutes of 1996, (AB 1562, Alby), are reimbursable state mandated costs (Claim No. CSM-97-TC-15 "Sex Offenders: Disclosure by Law Enforcement Officers"). Commencing with page 2, paragraph 2, of the test claim, claimant has identified that Chapter No. 908, Statutes of 1996, adds new public disclosure requirements on local law enforcement agencies, which it asserts are reimbursable state mandates.

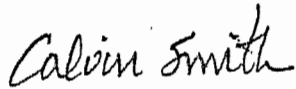
As the result of our review, we have concluded that we are unable to provide a recommendation on the merits of the claim at this time. Accordingly, pursuant to Section 1183.01(b)1 of the Commission's regulations, we are responding within 40 days of receipt of your letter to advise you that, at this time, we intend to oppose the finding of a reimbursable mandate in the statute which forms the basis of this claim and request that the Commission find the claim to be "disputed" for the purposes of the timelines in the Section. Accordingly, this letter constitutes our request for an extension of time for good cause to file our opposition to the claim. We believe that the fact that the issues in this claim require additional research to compare the basis of this test claim to applicable federal laws satisfies the "good cause" criterion on Section 1181.1(g)1 of the Commission's regulations. That Section provides that "good cause" may include, but is not limited to, the following factors: (1) the number of complexity of the issues raised; (2) whether a party is new to the case, or the necessity for other counsel; (3) whether the individual responsible for preparing the document has other time-limited commitments during the affected period; (4) whether the individual responsible for appearing at the hearing has other time limited commitments; (5) illness of a party; (6) a personal emergency; (7) a planned vacation which cannot reasonably be rearranged and/or which was not reasonably expected to conflict with the due date; (8) a pending public records request; and (9) any other factor which in the context of a particular claim constitutes good cause. Good cause may be established by a specific showing of other obligations involving deadlines which as a practical matter preclude filing the document by the due date without impairing quality. If the Commission makes a finding that the claim is

disputed, we would plan to submit our filing within 139 days from the date the test claim was filed, or no later than May 18, 1998, as required by Section 1183.01(b)1 of the Commission's regulations.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 8, 1998 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst, or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

A handwritten signature in cursive script that reads "Calvin Smith".

S. CALVIN SMITH
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: "Sex Offenders: Disclosure by Law Enforcement Officers"

Test Claim Number: CSM-97-TC-15

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On February 6, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service

C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention : Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

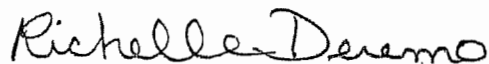
County of Tuolumne
Ms. Sylvia Divita, Employee Relations
Technician
28 North Lower Sunset Drive
Sonora, CA 95370

Mr. Steve Kiel
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814

Mr. Paul Minney
Girard & Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

Mr. Steve Smith, CEO
Mandated Cost Systems
2275 Watt Avenue, Suite C
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 6, 1998 at Sacramento, California.



Richelle Deremo

DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3706

RECEIVED

FEB 04 1998

COMMISSION ON
STATE MANDATES

January 29, 1998

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of January 8, 1998 the Department of Finance has reviewed the test claim submitted by the Clovis Unified School District (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 739, Statutes of 1997, (AB 1297, B. Morrow, et. al.), et. al., are reimbursable state mandated costs (Claim No. CSM-97-TC-22 "School Bus Safety II"). Commencing with page 6, Section C, of the test claim, claimant has identified the following new duties, which it asserts are reimbursable state mandates:

- (1) "School districts have incurred or will incur costs:
 - (a) To prepare the written information for parents required by Chapter 831/94 and Chapter 277/96 and to update the written information to incorporate any changes (for example changes in state law, school bus stops, etc.).
 - (b) To determine which pupils in prekindergarten, kindergarten and grades 1 through 6 are to be transported by school bus, and which of these pupils has previously been transported by school bus.
 - (c) To provide the written information required by Chapter 831/94 and Chapter 277/96 to the parents or guardians of pupils in prekindergarten, kindergarten and grades 1 to 6 at the time of pupil registration if the pupil had not previously been transported in a school bus or if the information provided to the parents or guardians of pupils to be transported by school bus must be updated (for example, due to change in school, change in bus routes, or change in school bus stops)."
- (2) "School districts have incurred or will incur costs:
 - (a) To prepare the transportation safety plan required by Chapter 739/97 and to revise the transportation plan as necessary.
 - (b) To follow the transportation safety plan, including determining which pupils require escort as pursuant to Vehicle Code section 22112(c)(3), following procedures for pupils in prekindergarten through grade 8 to board and exit school buses at each pupil's bus stop; and following procedures for boarding and exiting a school bus at a school or other trip destination.

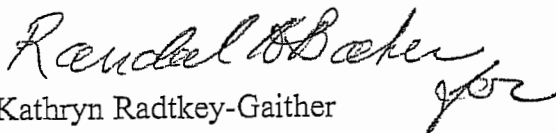
- (c) To make a copy of the transportation safety plan available at each school that is subject to the plan.
- (d) To inform district administrators, school site personnel, transportation services staff, school bus drivers, contract carriers, students and parents about the Vehicle Code requirements."

As the result of our review, we have concluded that we are unable to provide a recommendation on the merits of the claim at this time. Accordingly, pursuant to Section 1183.01(b)1 of the Commission's regulations, we are responding within 40 days of receipt of your letter to advise you that, at this time, we intend to oppose the finding of a reimbursable mandate in the statutes which form the basis of this claim and request that the Commission find the claim to be "disputed" for the purposes of the timelines in the Section. Accordingly, this letter constitutes our request for an extension of time for good cause to file our opposition to the claim. We believe that the fact that the number and potential complexity of the issues raised satisfies the "good cause" criterion on Section 1181.1(g)1 of the Commission's regulations. That Section defines "good cause" as "the number and complexity of issues raised." If the Commission makes a finding that the claim is disputed, we would plan to submit our filing within 139 days from the date the test claim was filed, or no later than May 19, 1998, as required by Section 1183.01(b)1 of the Commission's regulations.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 8, 1998 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Caryn Becker, Principal Program Budget Analyst at (916) 445-0328 or James Apps, state mandates claims coordinator for the Department of Finance, at 445-8913.

Sincerely,



Kathryn Radtkey-Gaither
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: "School Bus Safety II"

Test Claim Number: CSM-97-TC-22

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On January 29, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Sixten & Associates

Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

E-8

Department of Education
School Business Services
Attention: Marie Johnson
560 J Street, Suite 170
Sacramento, CA 95814

Mandated Cost Systems, Inc.

Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

San Diego Unified School District

Attention: James Cunningham
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

E-8
State Board of Education
Attention: Bill Lucia, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

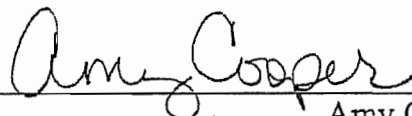
California Teachers Association
Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

Clovis Unified School District
Mr. Bill McGuire
Associate Superintendent/Business
1450 Herndon
Clovis, CA 93611-0599

Mr. James Apps
Department of Finance
915 L Street, 8th Floor
Sacramento, CA 95814

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 29, 1998 at Sacramento, California.



Amy Cooper

PUBLIC HEARING
COMMISSION ON STATE MANDATES

--oOo--

ORIGINAL

TIME: 9:37 a.m.
DATE: Thursday, February 26, 1998
PLACE: Commission on State Mandates
Ninth Floor Hearing Room
1300 I Street
Sacramento, California

--oOo--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--oOo--

MAR 11 1998

Reported By:

DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

A P P E A R A N C E S

COMMISSIONERS PRESENT

ROBIN J. DEZEMBER, Chairperson
Representative for **CRAIG L. BROWN**, Director
State Department of Finance

ALBERT P. "AL" BELTRAMI
Public Member

RICHARD CHIVARO
Representative for **KATHLEEN CONNELL**
State Controller's Office

NANCY PATTON,
Representative for **PAUL MINER**, Director
State Office of Planning and Research

BILL SHERWOOD
Representative for **MATTHEW FONG**
State Treasurer's Office

JOANN E. STEINMEIER
School Board Member
Arcadia Unified School District

STAFF PRESENT

PAULA HIGASHI, Executive Director
Commission on State Mandates

GARY D. HORI, Legal Counsel
Commission on State Mandates

CAMILLE SHELTON, Staff Counsel
Commission on State Mandates

ALSO PRESENT

Appearing Re Agenda Item 6:

For the City of Los Angeles:

ALLAN BURDICK, Vice President
David M. Griffith & Associates, Ltd.
4320 Auburn Boulevard, Suite 2000
Sacramento, CA 95841

I N D E X

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8. School Bus Safety II, CSM-97-TC-22 Clovis Unified School District	

1 calendar.

2 MS. HIGASHI: The first item on the agenda is
3 the proposed consent calendar, which consists of items
4 one, two and three below on the agenda.

5 Item one is the hearing of January 29th, 1998,
6 approval of the minutes, and item two consists of the
7 Commission making a finding of eight new test claims to
8 be in dispute, and item three is the approval of a
9 statewide cost estimate for the test claim in Crime
10 Victims Rights.

11 MR. DEZEMBER: Okay. First, let me ask if
12 there are comments, corrections or objections to the
13 minutes?

14 Then, without objection, the minutes will be
15 approved.

16 We have -- on the disputed test claims, there are
17 eight of them. Do we have comments, questions or
18 concerns about any of those items?

19 Then without objection, those will be approved as
20 well.

21 Item three, the last item on the consent calendar,
22 is our adoption of statewide cost estimates, which is an
23 action. I will ask, do you have objections, comments or
24 corrections?

25 Then, without objection, those will be adopted by
26 the Commission as well.

27 MS. HIGASHI: We're now at item four. Item
28 four is the Executive Director's Report. And I just

1 wanted to report, first on pending legislation, then on a
2 couple of the Commission's recent activities, and then on
3 some staffing changes, and then items for the next
4 agenda.

5 First, we have a multi-claims bill that's been
6 introduced. It's SB 1855 by Senator Thompson.

7 Another bill also affecting the mandates process has
8 been introduced as being sponsored by CSAC. It's
9 AB 1963, and it's by Assembly Member Aguiar.

10 The third bill is Assembly Bill number 2288,
11 introduced by assembly Member Baldwin; and this relates
12 to the addition of "sunset" provisions in the
13 legislation.

14 These are reported to you for your information.

15 Also, the Legislative Analyst's report that was
16 recently issued, has some information that would be of
17 interest to all of the parties before the Commission on
18 pages G-153. Beginning there, the Legislative Analyst
19 makes a recommendation that, in order to reduce state
20 cost and legal ambiguity, that the Legislature should
21 enact legislation to repeal the 30 mandates that have
22 been suspended consistently for several years; or, two,
23 to modify them so that the local government
24 responsibility is optional, fee-financed, or mandatory,
25 only if the Legislature approves funding in the Budget
26 Act. And so I just make note of this for everyone's
27 information.

28 We have made some copies. We may need to make more.

1 MR. DEZEMBER: Thank you.

2 MS. HIGASHI: In your binders, we have given
3 you a copy of the 1998 rulemaking calendar. This is a
4 requirement placed upon all the state agencies. And also
5 we've included a schedule for sunset review regulations.
6 We will be hearing from the Commission staff in the near
7 future as to how we will specifically implement these
8 activities.

9 The Commission staff is having a pre-hearing
10 conference this afternoon to review the POST statewide
11 cost estimates for two additional mandated programs; and
12 tomorrow morning at 9:00 a.m. we'll convene a public
13 hearing on the proposed rulemaking concerning
14 reconsideration.

15 Immediately after tomorrow morning's hearing, staff
16 will be reconvening its workshop on parameters and
17 guidelines that we've been holding with the Controller's
18 Office and other interested parties.

19 MR. DEZEMBER: How is that going?

20 MS. HIGASHI: Oh, it was -- actually I found it
21 to be a very interesting, informative and productive
22 session, in that -- in that for the first time all of us
23 were sitting at a table together and discussing issues,
24 which we had probably, as staff and as representatives,
25 really never discussed before, as openly and as frankly
26 as we could. Again, it was very valuable for that
27 purpose.

28 And we're hoping that as a result of these

1 workshops, that we can at least agree on what we agree
2 to, and define what we disagree on, so that when we bring
3 parameters and guidelines before you, it will be much
4 simpler because we can just go right to the issues of
5 disagreement and the differences, and we have some
6 consistency in the language.

7 MR. DEZEMBER: Good.

8 MS. HIGASHI: I thought it was an interesting
9 session.

10 The other announcements I just wanted to make were
11 regarding a couple of staff changes. Last month, Lucila
12 Ledesma (phonetic) accepted a position with the
13 Department of Developmental Disabilities; and her
14 transfer was in -- was effective a week ago.

15 MR. BELTRAMI: Paula, I wonder if you could
16 raise your voice a little bit, because we don't have
17 microphones in here, so it's hard to hear.

18 MS. HIGASHI: Oh, I'm sorry. I'll just repeat
19 what I said.

20 Lucila Ledesma, one of our program analyst staff has
21 transferred to the Department of Developmental
22 Disabilities.

23 Julie Gordon (phonetic), one of our staff persons,
24 who has functioned primarily as a receptionist and she's
25 staff in special education, as well as set up most of our
26 Commission hearings, this is her last week and this is
27 her last hearing. And I just wanted to let all of you
28 know, you may want to be sure to stop in to wish her

1 well.

2 Ironically, she's transferring to the Commission on
3 Peace Officer Standards and Training, an agency
4 identified for her by some test claims. But she's
5 been -- I want to acknowledge on the record, her service
6 has been exemplary; her attitude has been wonderful.
7 She's been absolutely dedicated, and we're really wishing
8 her well in her career change, so that she can pursue
9 more opportunities.

10 MR. DEZEMBER: Thank you.

11 MS. HIGASHI: So that brings us to an issue
12 which you may or may not to deal with, and that is the
13 issues set for next month's hearing. And in the agenda
14 packet, we provided you with information in the agenda
15 notice on what we saw for the next hearing. And I'll
16 just briefly go over those with you and let you know
17 which may or may not go and when we'll be making a
18 determination finally.

19 What we've tentatively set for March is "January 1,
20 1975, and Test Claim Analysis"; and that's will by
21 counsel.

22 MR. DEZEMBER: Can I ask you where that is?
23 I'm having trouble finding it.

24 MS. HIGASHI: It's in the agenda.

25 MR. DEZEMBER: It's on the back?

26 MS. HIGASHI: The very back page, page six.

27 MR. DEZEMBER: Okay. Go ahead.

28 MS. HIGASHI: Okay. We have -- we're hoping to

1 be -- to have a few statewide cost estimates. "Prisoner
2 Parental Rights" is one we'll be reviewing this
3 afternoon; the "Pesticide Use Reports" is another one
4 we'll be reviewing; "Threats Against Peace Officers," if
5 we have P's and G's and we get the surveys out for the
6 final compilation of data, we're hoping we have that one
7 done.

8 And on the "Absentee Ballots," we are continuing to
9 receive survey data from County Registrars of Voters to
10 help us in putting that one together so we may end up
11 having enough data to have a recommendation.

12 On "Investment Reports," we do not have enough data
13 to proceed with the statewide cost estimates at this
14 time.

15 Regarding test claims, we have the possibility of
16 the "Three Strikes" test claim being set for hearing, and
17 the "Batterer's Treatment Program" and "Caregiver
18 Affidavits," "Involuntary Transfers" is on this list, and
19 I was hoping to get it out and the draft staff analysis
20 has not been issued yet, so it's unlikely it will be set
21 for March but, more likely, for April.

22 The indecisiveness, in terms of setting them for the
23 agenda, is that until we receive the comments back from
24 the parties on the draft staff analyses, we're not sure
25 quite how much work will be required to do the revisions,
26 if necessary, to the staff analysis on "Three Strikes,"
27 as well as the Batterer's Treatment Program.

28 In addition, we are -- we will place the proposed

1 P's and G's for "Domestic Violence Incident Policies."

2 So far, that's our tentative agenda. And we will
3 give you a report on the rulemaking hearing before we
4 proceed to scheduling the proposed regulations for
5 adoption.

6 MR. DEZEMBER: You need to raise your voice a
7 little more.

8 MS. HIGASHI: Okay.

9 And just the last thing is just a reminder about the
10 Commission's Website. We're continuing to establish our
11 internal procedures for uploading our documents on the
12 Website. There have been a few bugs; but for the most
13 part we believe it's been working, and we hope all of you
14 are accessing it. Our schedule is to get everything up a
15 week before the hearings, at least.

16 MR. SHERWOOD: Paula, the "Special Education"
17 item, will that be heard also?

18 MS. HIGASHI: Oh, and the Special Education
19 item. I'm sorry.

20 Are there any questions?

21 MR. DEZEMBER: Any questions?

22 MS. HIGASHI: This brings us to item five.
23 Item five consists of two proposed orders for the
24 Commission to begin rulemaking. The first order that's
25 proposed, consists of -- addresses regulatory actions
26 concerning Election of Officers and Designation of
27 Default rules and amendment to the Conflict of Interest
28 Code. And that -- these are both activities which

1 Commission staff recommends we go forward on.

2 The Election of Officers and Designation of Default
3 Rules was identified by the Commission at its July 31,
4 '97 hearing for action. The Conflict of Interest Code
5 amendments is one that we were due to update our
6 regulations.

7 So by adoption of this order, what you will be doing
8 is setting in motion the process for Commission staff to
9 move forward on these issues and to proceed.

10 Are there any questions?

11 MR. DEZEMBER: Do you want to go through the
12 other tabs or are these simply --

13 MS. HIGASHI: Oh, I can go through -- the tabs
14 are here for background.

15 MR. DEZEMBER: Okay, the tabs are only
16 background? They're not --

17 MS. HIGASHI: They are background information.

18 Tab three, the proposed order, 98-2, is one that
19 would allow us to start the process rolling again to
20 address the SB 1033 regulations, which are currently
21 drafted in their original format, which only provides for
22 a one-year finding to be made by the Commission.

23 In 1996 legislation changed this provision,
24 extending it to a three-year finding. Last year, we
25 started the rulemaking proceeding on this, and did
26 receive public comment. We abandoned the process because
27 at that point in time we believed that the SB 1033
28 process might be included as part of the "Welfare Reform

1 Movement" and would no longer exist; but it continues to
2 exist, so staff believes that we must move forward on
3 this regulation.

4 What we intend to do, is to begin from the original
5 staff draft and to propose a new regulation that would
6 incorporate the comments that we already received, so
7 that we can start from a revised draft and then put that
8 out for public comment.

9 We would bring that back to you in May. And if we
10 were to follow the timetable outlined here, it would
11 allow us, we hope, to have an amended regulation in place
12 by November, which is an important milestone date because
13 there is the potential for new application -- renewal
14 applications to be filed.

15 MR. DEZEMBER: Yes. So we have five items that
16 we've been moving forth on rulemaking: Election of
17 Officers, Role of Chairperson, Default Rules, Conflict of
18 Interest, and the 1033 change?

19 MS. HIGASHI: That's correct.

20 MR. DEZEMBER: Okay.

21 MS. HIGASHI: And staff is -- staff's
22 recommendation is approval of the two orders.

23 MR. DEZEMBER: And those orders are to begin
24 the regulatory process, including the public notice
25 period, et cetera?

26 MS. HIGASHI: That's correct.

27 MR. DEZEMBER: Okay, and you need an action on
28 that?

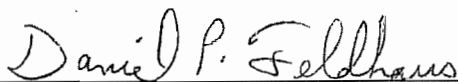
1 MS. HIGASHI: I need an action.
2 MR. DEZEMBER: Do I have a motion?
3 MS. STEINMEIER: I move.
4 MR. DEZEMBER: Second.
5 MS. HIGASHI: Mr. Beltrami? Mr. Beltrami?
6 MR. BELTRAMI: Yes.
7 MS. HIGASHI: Mr. Chivaro?
8 MR. CHIVARO: Yes.
9 MS. HIGASHI: Ms. Patton?
10 MS. PATTON: Aye.
11 MS. HIGASHI: Mr. Sherwood?
12 MR. SHERWOOD: Aye.
13 MS. HIGASHI: Ms. Steinmeier?
14 MS. STEINMEIER: Aye.
15 MS. HIGASHI: Mr. Dezember?
16 MR. DEZEMBER: Aye.
17 Okay. Thank you very much.
18 MS. HIGASHI: The next item is item six. This
19 item will be presented by Camille Shelton of our staff.
20 MS. SHELTON: Good morning.
21 MR. DEZEMBER: Good morning.
22 MS. SHELTON: The City of Los Angeles has filed
23 an incorrect reduction claim, contending that the State
24 Controller's Office incorrectly reduced a reimbursement
25 claim for fiscal years 1984 through 1987 under statutes
26 and regulations requiring all owners of underground
27 storage tanks to meet specified standards.
28 This claim was originally heard by the Commission on

REPORTER'S CERTIFICATE

I hereby certify that the foregoing proceedings were reported by me at the time and place therein named; that the proceedings were reported by me, a duly certified shorthand reporter and a disinterested person, and was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings, nor in any way interested in the outcome of the cause named in said matter.

In witness whereof, I have hereunto set my hand this 10th day of March, 1997.



DANIEL P. FELDHAUS
CSR #6949, RDR, CRR

MINUTES
COMMISSION ON STATE MANDATES
Thursday, February 26, 1998
9:30 a.m.
Commission on State Mandates
Ninth Floor Hearing Room
1300 I Street
Sacramento, California

Present: Chairperson Robin Dezember
Representative of the Director of the Department of Finance
Member Bill Sherwood
Representative of the State Treasurer
Member Richard Chivaro
Representative of the State Controller
Member Nancy Patton
Representative of the Director of the Office of Planning and Research
Member Albert Beltrami
Public Member
Member Joann Steinmeier
Representative of School Boards

Absent: Member Dave Cox
Representative of County Boards of Supervisors

Roll Call

There being a quorum present, Chairperson Dezember called the meeting to order at 9:37 a.m.

Closed Executive Session

The Commission met in Closed Executive Session to consider and act, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(1):

Statement of Decision Regarding the Determination of Plaintiffs/Petitioners' Entitlement to Attorney Fees, in the matter of *Stephen Pincus et al. v. California Commission on State Mandates, Alameda County and Board of Supervisors of the County et al.*, San Francisco County Superior Court No. 972504, Alameda County's First SB 1033 Application

Open Session

Chairperson Dezember reconvened the Commission in Open Session at 10:09 a.m. and noted for the record that Member Chivaro had arrived during closed session.

Consent Calendar

The following Consent Calendar, consisting of Items 1 through 3, was approved without comments, corrections, or objections:

Approval of Minutes (action)

Item 1 Hearing of January 29, 1998

Findings of Disputed Test Claims (action)

Item 2

1. *School Crimes Reporting II* - CSM-97-TC-03
 San Diego Unified School District, Claimant
 Penal Code Sections 628.2 and 628.6
 Chapter 759, Statutes of 1992
 Chapter 410, Statutes of 1996
 Title 5, California Code of Regulations Sections 700-704
2. *Property Tax Shift From Local Governments To Educational Revenue Augmentation Fund ("ERAF")* – CSM-97-TC-04
 County of Sonoma et al, Co-Claimants
 Revenue & Taxation Code Sections 95, et seq; 95.1, et seq.; 97.01 et seq.; 97.03; 97.035; and 97.038; Education Code Section 41204.5
 Chapter 699, Statutes of 1992; Chapter 700, Statutes of 1992; Chapter 703, Statutes of 1992; Chapter 1369, Statutes of 1992; Chapter 66, Statutes of 1993; Chapter 68, Statutes of 1993; Chapter 130, Statutes of 1993; Chapter 904, Statutes of 1993; Chapter 905, Statutes of 1993; Chapter 906, Statutes of 1993; and Chapter 1279, Statutes of 1993
3. *Law Enforcement Racial and Cultural Diversity Training*
 CSM-97-TC-06
 County of Los Angeles, Claimant
 Chapter 1267, Statutes of 1992
 Penal Code Section 13519.4
4. *Sexual Harassment Training in the Law Enforcement Workplace*
 CSM-97-TC-07
 County of Los Angeles, Claimant
 Penal Code Section 13519.7
 Chapter 126, Statutes of 1993
5. *Educational Services Plan for Expelled Pupils*–CSM-97-TC-09
 Kern County Superintendent of Schools, Claimant
 Education Code Sections 48915, 48916, 48916.1, 48926
 Chapter 1052, Statutes of 1996 et al

6. *Very High Fire Hazard Severity Zones*–CSM-97-TC-13
City of Redding, Claimant
Government Code Sections 51175 through 51187, 13132.7
Health and Safety Code Section 13108.5
Chapter 1188, Statutes of 1992
Chapter 843, Statutes of 1994
Chapter 333, Statutes of 1995
7. *Sex Offenders: Disclosure by Law Enforcement Officers*
CSM-97-TC-15
County of Los Angeles, Claimant
Penal Code Sections 290 and 290.4
Chapter 908, Statutes of 1996
8. *School Bus Safety II* - CSM-97-TC-22
Clovis Unified School District, Claimant
Education Code Sections 39831.3, 38048, 39831.5
Vehicle Code Section 22112
Chapter 739, Statutes of 1997 et al

Adoption of Statewide Cost Estimates (action)

- Item 3** *Crime Victims Rights* – CSM-96-358-01
County of Santa Clara, Claimant
Penal Code Section 679.02 (a)(12)(A), (B) and (C)
Chapter 411, Statutes of 1995, Sections 1 and 2
Fiscal Years 1995-96 through 1998-99

Executive Director's Report and Next Agenda (information only)

- Item 4** Update on Legislative Proposals
1998 Rulemaking Calendar and Sunset Review of Regulations

Paula Higashi, Executive Director to the Commission, reported the following:

Senate and Assembly Bills

- Senator Thompson has introduced the Commission's Local Claims Bill, SB 1855.
- The California State Association of Counties (CSAC) is sponsoring AB 1963, by Assembly Member Aguiar.
- AB 2288, introduced by Assembly Member Baldwin, relates to the addition of sunset provisions in the legislation.

Legislative Analyst's Report

- The recently issued Legislative Analyst's Report includes information of interest to all parties before the Commission (beginning at page G-153). The Legislative Analyst recommends that the Legislature enact legislation to repeal the 30 mandates that have been suspended consistently for several years, or to modify them so the local government responsibility is optional, fee-financed, or mandatory, only if the Legislature approves funding in the Budget Act.

Other Announcements

- The 1998 Rulemaking Calendar includes a schedule for Sunset Review of Regulations.
- Commission staff is holding a pre-hearing conference today to review two statewide cost estimates. Tomorrow staff will convene a public hearing on the proposed rulemaking concerning reconsideration. Following this, staff will reconvene its workshop on parameters and guidelines.
- Two employees of the Commission will be leaving: Lucila Ledesma accepted a position with the Department of Developmental Disabilities and Julie Gordon accepted a position with the Commission on Peace Officer Standards Training.
- Ms. Higashi outlined the tentative agenda for the March hearing.
- The Commission Website is up and running. Staff's goal is to upload agenda items at least one week before the hearing. (www.csm.ca.gov/)

Approval of Commission Orders to Initiate Rulemaking (action)

- Item 5** Adopt new regulations on Election of Officers, Duties of Chairperson, and Designation of Default Rules
 Amend existing Conflict of Interest Code to include staff counsel as designated employee (Appendix to Section 1189.10)
 Amend applicable sections of Article 6.5, Applications For A Finding of Significant Financial Distress to conform with current law

Ms. Higashi noted that, by adoption of this order, the Commission would set in motion the process for staff to move forward on these issues. On motion by Member Steinmeier and second by Chairperson Dezember, on a roll call vote, the staff recommendation was adopted unanimously.

Hearings

Incorrect Reduction Claim (Action)

- Item 6** *Underground Storage Tanks-CSM-4381*
 City of Los Angeles, Claimant
 Health and Safety Code Section 25150.1 et seq.
 Chapter 23, CCR, Chapter 3, Subchapter 16,
 Chapter 1046, Statutes of 1983

Ms. Camille Shelton introduced this item and stated staff's position that this incorrect reduction claim does not involve costs mandated by the state and, therefore, there is no remedy that can be granted by the Commission under article XIII B, section 6 of the Constitution. She added that, if the claimant believes the State Controller's Office improperly reduced its claim, it is not prevented from directly seeking relief or remedy from the court.

After being sworn in, Mr. Allan Burdick, representing the City of Los Angeles in this matter, said that he believed staff's recommendation was inappropriate. He submitted that, at the time of the Commission's decision, the question was clearly not whether or not the City of Los Angeles was entitled to costs, but rather, how much. Quoting former Member Stipert, Mr. Burdick said that the record is clear—the Commission unanimously adopted the action. The

Commission should therefore enforce its prior action and have staff carry out that directive. He also clarified that he had not requested a continuation of the matter for today's hearing. In sum, Mr. Burdick requested the Commission to simply confirm its prior action, and direct staff to go back and convene with the parties and then return to the Commission with a dollar amount to consider.

Chairperson Dezember clarified the claim's chronology and issue. Mr. Burdick believed that the State Controller's Office (SCO) position (for the 1984 to 1988 time period) was that the City of Los Angeles' record keeping was not clear enough for it to determine the exact amount of time spent on mandated activities. Since the city could not identify excluded activities, the SCO would pay nothing. In its 1990 decision on a separate (but related) test claim filed by the counties of Fresno and Los Angeles, the Commission did not find a reimbursable state mandate. Then in 1991, the Commission first heard the improper reduction claim (IRC). The Chair inquired whether Mr. Burdick asked the Commission to rule on a claim reduction by the SCO on a funded program that, at the time of that event, was never before the Commission and was not subject to the Commission's decision. Mr. Burdick confirmed this, and then asked when the Legislature finds a program to be mandated and funds it, whether this falls within the incorrect reduction area or the whole process, or if it should be treated separately.

In response to Member Steinmeier's request, Ms. Shelton clarified the jurisdictional issue, explaining that the Commission does have jurisdiction to hear IRCs. She added that the Legislature delegated the authority to make state-mandated determinations to the Commission. The first issue in any IRC is to determine if the program constitutes a reimbursable state mandated program. This issue was never before the Commission. The Commission did make the determination on the prior test claim in April 1990 that a reimbursable state mandated program did not exist.

Chairperson Dezember questioned whether the Commission could hear IRCs on programs for which it has not made a prior determination that a state mandate exists. Ms. Shelton replied that the Commission has the authority to hear IRCs, but must first determine whether or not a state mandated program exists. Member Beltrami thought the Legislature, when funding the program, made a statement in the legislation that the program was mandated. Mr. Burdick commented on the Commission's regulations.

Member Beltrami asked why the Commission found no reimbursable mandate in 1990 and then held a hearing in 1991. Ms. Shelton explained that, under the *County of Los Angeles v. State of California* decision, the program was not mandated from 1984 forward, under article XIII B, section 6. Member Patton clarified that the Commission was responding to the Legislature defunding the program because of that court case. Ms. Shelton, Mr. Hori, and Mr. Burdick agreed.

Ms. Higashi noted that the test claim was filed on September 15, 1988. Mr. Burdick believed that this test claim questioned whether the program was still a mandate, based on the *Los Angeles* decision. Chairperson Dezember felt the clear result of the court's opinion was that no mandate existed. However, in fact, there was a funded mandate from 1984 to 1988. Member Sherwood agreed.

Members Beltrami and Steinmeier wanted more information as to the Commission's 1990 determination that the counties and cities had the authority to establish fees sufficient to cover costs. Mr. Burdick explained that the counties could not recover costs from themselves for the

costs of inspecting their own tanks and that there were implementation costs as well. Ms. Shelton clarified that the *County of Los Angeles* decision was not to be applied retroactively, rather, it interprets article XIII B, section 6. Therefore, it applies to all claims brought under article XIII B, section 6.

The Chair sensed that this was not a Commission issue, and so the Commission should move on to allow the claimant to seek an available recourse, or challenge that determination. Mr. Burdick responded that the Commission is the exclusive remedy for local government and it has the jurisdiction over matters related to state mandates. The Chair reminded Mr. Burdick of the Commission's 1990 decision denying the test claim. Mr. Burdick still believed it had to be a retroactive application because the claimant was not asking for costs after that date.

Member Steinmeier believed the Commission had to either reopen the test claim or suggest the claimant try another remedy. Since a denial has occurred, she believed the claimant was asking the Commission to reopen the matter. She felt that doing this would put the Commission in a difficult position for future cases, especially because the Commission is in the middle of reviewing its regulation.

Mr. Burdick felt that there was no final decision made. He interpreted the motion and unanimous vote as an action to direct staff to do something, which it had not. He was not asking the Commission to reopen the issue; rather, to direct staff to do what it had been directed to do. Member Beltrami noted the Commission had reopened the issue in 1991.

On motion by Chairperson Dezember, and second by Member Chivaro, the staff recommendation was adopted on a 4 to 2 vote, with Members Beltrami and Patton voting "no."

Adoption of Proposed Parameters and Guidelines (Action)

Item 7 *Threats Against Peace Officers*-CSM-96-365-02
 County of San Diego, Claimant
 Penal Code Section 832.9
 Chapter 1249, Statutes of 1992
 Chapter 666, Statutes of 1995

Ms. Paula Higashi introduced this item and noted staff's recommendation that the Commission adopt the parameters and guidelines with the subject paragraph included. In response to Chairperson Dezember, Ms. Higashi affirmed that staff had responded to Mr. Burdick's assertions in its analysis.

Mr. Burdick, representing the California State Association of Counties (CSAC), submitted that this situation seems analogous to that in the *Worker's Compensation* claim. Mr. Burdick concluded that he still had the same position and was unable to understand the position taken by staff.

The Chair requested clarification of the workers' compensation process and the use of the term 'litigated process'. Ms. Shelton replied that, when an employee files a claim, it is up to the insurance company to decide whether to pay the claim. Insurance companies routinely deny those cases regarding cancer presumption. To receive benefits, the employee must file a claim with the Workers' Compensation Appeals Board. Whether it is fully litigated or resolved midway through the process is situational. The Chair clarified that, if a claim was granted by

the insurance company that would not be termed a litigated process. Mr. Burdick added that actually, the law prevents local agencies from being insured by a carrier other than the State Workers' Compensation Board, and estimated that over 90 percent of claims are accepted and paid. He noted the current process of state intervention to prevent litigation.

Member Beltrami asked if the investigation of a threat is covered for reimbursement. Mr. Burdick responded that, if it is part of processing the claim, it should be reimbursable. Member Beltrami questioned whether the new Penal Code amendment in section 832.9 helps clarify what is covered. Mr. Burdick deferred the question to the legal staff. Ms. Higashi responded that the section is clear, in terms of what kinds of costs would be paid out for reimbursement by the state. She noted staff's survey of law enforcement agencies throughout California, which had a 90 percent response rate. Though threats were reported, the actual dollar amount was less than \$10,000. Mr. Burdick noted that many officers might not believe it is appropriate to ask for relocation.

Upon motion by Member Steinmeier and second by Member Sherwood, the Commission unanimously adopted the staff recommendation. [Member Chivaro left the room for the day.]

Request for Reconsideration and Adoption of Proposed Statement of Decision (Action)

Item 8 *Domestic Violence Training and Incident Reporting* – CSM-96-362-01
 County of Los Angeles, Claimant
 Penal Code Sections 13519 and 13730
 Chapter 965, Statutes of 1995

Camille Shelton of the Commission staff presented this item in two parts.

A. Claimant's Request for Reconsideration

Mr. Leonard Kaye, representing Los Angeles County, was sworn in as a witness. Mr. Kaye believes that reconsideration should be reserved for the very few Commission decisions that are fundamentally incorrect; that is, those decisions that are contrary to law or so fundamentally in error as to be beyond the jurisdiction of the Commission. Mr. Kaye submitted that the Commission's jurisdiction is bound by Section 1188.2, subdivision (a), of the California Code of Regulations (CCR), requiring the Commission's decision be made pursuant to evidence and adjudicatory hearings be based on the record. Additionally, the Commission is bound by section 1187.5, subdivision (a), which prohibits hearsay evidence not sufficient in itself to support a finding and not admissible over civil objection in civil actions. Mr. Kaye felt that the Commission inadvertently wandered from its regulatory parameters. Therefore, based on his beliefs stated above, Mr. Kaye respectfully requested a rehearing of the *Domestic Violence Incident Reporting and Training* test claim.

In addition to Mr. Kaye's comments, Mr. Burdick added his concern that the Commission not overlook a point raised at a previous hearing that not all officers have the same training requirements. He recollected that some specialist categories have requirements that may exceed the 24 hours of training, and that this training would add to that requirement.

Mr. Jim Cunningham with the San Diego Unified School District was sworn in as a witness. He stated his dislike for the term "reconsideration" in this case, because the Commission had not yet approved a statement of decision. Consequently, Mr. Cunningham believed that the Commission could revisit this issue. He clarified that whether the Commission could revisit a prior final decision was a separate issue, and is currently the subject of the regulation.

Ms. Shelton agreed with Mr. Cunningham that 1188.2 does not grant the Commission authority to reconsider a decision or hearing of a test claim, but noted that section 1187.9 does provide that, upon showing of good cause, the Commission may rehear a matter. She added that the arguments stated today had already been considered by the Commission at the December hearing and that staff found that there is no showing of good cause.

Discussion involving hearsay evidence ensued. Chairperson Dezember noted that the Commission is able to rely on hearsay evidence within a certain framework that is much more liberal than the courts. He believed that the Commission should not continue to belabor and refine points. He added that perfection is not something we are going to accomplish, and the Commission should make a decision, publish that decision, and move on. He concluded that the Commission gave this matter a full and fair hearing in December, and the only issue is that the publication accurately reflect the decision. Therefore, Chairperson Dezember moved the staff recommendation and Member Sherwood seconded the motion.

Member Beltrami questioned the Commission's position on bill analysis arguments. Ms. Shelton replied that the *City of San Jose* case stated that legislative findings are irrelevant to the issue of whether a mandate exists. Chairperson Dezember interpreted this to mean that the findings can be taken into account, but are not controlling; the Commission must make the determination.

Chairperson Dezember moved for approval of the staff recommendation. Member Sherwood seconded the motion. On a roll call vote, the Commission unanimously adopted the staff recommendation to deny reconsideration.

B. Adoption of Proposed Statement Of Decision

Item 8-B included the adoption of the proposed statement of decision. Chairperson Dezember noted that the issue was whether the proposal accurately reflects what the Commission did at the December hearing. Member Sherwood moved for approval of the proposed decision, with a second by Member Patton. On a roll call vote, the Commission unanimously approved the proposed statement of decision.

A brief recess was taken at 11:50 a.m.

Test Claims (action)

Item 9 *Two-Way Traffic Signal Communication* – CSM-4504
 County of Los Angeles, Claimant
 Vehicle Code Section 21401
 Chapter 1297, Statutes of 1994

Camille Shelton presented this item.

The following persons were sworn in as witnesses: Mr. Leonard Kaye, representing Los Angeles County; and Mr. Robert Scharf, Department of Public Works; Mr. Larry Thelen, and Mr. Les Kubel, the Department of Transportation (Caltrans).

Mr. Kaye agreed with staff in this matter. He clarified that the county did not formally amend its claim to include the subject executive order, but recognized that it was part of the interpretations of the statute. He noted a slight disagreement with staff regarding meeting and conferencing costs. Regarding equipment, Mr. Kaye generally agreed with staff for Los

Angeles County's purposes, but requested the Commission recognize that not every local jurisdiction in the State would have the same circumstance.

Mr. Thelen commented that he did not agree with much of staff's recommendation, but found it to be logical or rational. He felt that staff sent a message to those drafting legislation to be more meticulous and careful as to make their intentions clear. Mr. Thelen requested the Commission to consider limiting the effect of its decision solely to the one county that has invested an independent effort (Los Angeles County). He also noted his concern about defining the congestion management program.

Mr. Scharf believes that Los Angeles County is somewhat unique in the state and noted that, historically, the county has developed its own software. He added that accepting what Caltrans produced was not really an option for the county because it is very large and has different philosophies on traffic control.

Mr. Kubel said that, to the best of his knowledge, Caltrans develops its own software and that Los Angeles County is the only jurisdiction that also develops its own software. He was concerned that the staff recommendation may encourage others to hire consultants to develop their own software (at potentially unreasonable prices), and did not feel this was necessary. He requested the Commission refer to the matter as a "claim," as opposed to a "test claim," and make it similar to a class action event.

In response to Member Beltrami, Mr. Kaye noted that he knew of no one who had done an in-depth survey of what each jurisdiction has done, and therefore, the parameters and guidelines may need some leeway. Mr. Kaye also noted that it is a self-certification process; Caltrans does not certify compliance. The number of counties in compliance or not in compliance is not currently known.

In response to Chairperson Dezember's question of whether the list of limitations in the staff analysis addressed his concern, Mr. Kubel replied that it did not. Mr. Kubel remained concerned about the purchasing of new software. Mr. Kubel, in response to Mr. Kaye's comments, said with fair certainty that there is no other jurisdiction in the state developing its own software. He added that he would be satisfied if the Commission were to restrict the software to jurisdictions that develop their own software.

The Chair was not sure if this action was possible. Ms. Shelton asked for clarification. Chairperson Dezember felt the Commission could determine appropriate guidelines for costs, if it finds a mandate. He noted the Commission had little ability to narrow the application of the law, and asked whether there was still movement toward a federal standard. Mr. Kubel replied that this was still in draft form.

Mr. Thelen commended staff for its finding that meeting and conferring did not constitute a mandate. He noted that people come to those sessions to learn quickly and efficiently, and that it would upset the Department to be billed by the attendees of the sessions.

Member Steinmeier asked legal staff whether there was any precedence, or authority, for the Commission to make the matter a claim and not a test claim. Ms. Higashi and Mr. Gary Hori, Legal Counsel to the Commission, indicated there was not. Members Steinmeier and Beltrami responded that it might have to be done through the parameters and guidelines.

In response to Member Beltrami, Mr. Scharf replied that, for approximately 20 years, Los Angeles County has operated independently from the state in matters pertaining to traffic

control signals. Upon motion by Member Sherwood, and second by Member Beltrami, the staff recommendation was adopted unanimously.

Item 10 *Special Education: Ages 3, 4, and 5, Not Requiring Intensive Services (RIS) CSM-3986-A, CSM-3986*

Long Beach Unified School District, Claimant

Riverside County Superintendent of Schools et al., Claimant

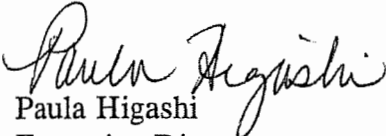
(Includes Ages 3-5 Not RIS Transportation, North Region SELPA, Claimant.)

Chapter 797, Statutes of 1980 et al.

This item was postponed prior to the hearing.

Adjournment

There being no further business, Chairperson Dezember adjourned the meeting at 12:28 p.m.


Paula Higashi
Executive Director

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COMMISSION ON STATE MANDATES

NOTICE AND AGENDA ¹

State Capitol, Room 437
Sacramento, California

July 26, 2001

9:30 A.M. - PUBLIC SESSION

I. CALL TO ORDER AND ROLL CALL

II. APPROVAL OF MINUTES

Item 1 June 28, 2001

III. PROPOSED CONSENT CALENDAR (action)

Note: If there are no objections to any of the following action items, the Executive Director will include it on the Proposed Consent Calendar that will be presented at the hearing. The Commission will determine which items will remain on the Consent Calendar.

IV. HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses will be sworn in en masse before consideration of Items 2-5.

A. TEST CLAIMS

Item 2 *Sex Offenders: Disclosure by Law Enforcement Officers*, CSM 97-TC-15
County of Tuolumne, Claimant
Penal Code Sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

B. INCORRECT REDUCTION CLAIMS

Item 3 *Graduation Requirements*, - 4435-I-13 & 4435-I-39
Castro Valley Unified School District
Education Code Section 51225.3
Statutes of 1983, Chapter 498

¹ <http://www.csm.ca.gov>

C. PROPOSED STATEMENTS OF DECISIONS – TEST CLAIMS

- Item 4* *Comprehensive School Safety Plans*, 98-TC-01 and 99-TC-10
Kern High School District, Claimant
Education Code Sections 35294.1, 35294.2, 35294.6 and 35294.8
Statutes of 1997, Chapter 736, Statutes of 1999, Chapter 996
- Item 5* *Cal-Voter Program* – 98-TC-15
County of Tehama, Claimant
Elections Code Section 2168
Statutes of 1995, Chapter 913

V. INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

A. ADOPTION OF PROPOSED PARAMETERS AND GUIDELINES

- Item 6 *County Treasury Oversight Committees* - 96-365-03
County of San Bernardino, Claimant
Government Code Sections 27130 et seq.
Statutes of 1995, Chapter 784; Statutes of 1996, Chapter 156

VI. EXECUTIVE DIRECTOR'S REPORT (info)

- Item 7 Workload, Legislation, Next Agenda

VII. PUBLIC COMMENT

VIII. CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed Executive Session may begin at this time or may begin earlier on this day and reconvene at the end of the meeting.)

A. PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

1. *County of San Bernardino v. State of California, et al.*, Case Number B140704 in the Appellate Court of California, Second Appellate District, Division 2.
2. *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number D038027, in the Appellate Court of California, Fourth Appellate District, Division 1.
3. *Department of Finance v. Commission on State Mandates, et al.*, Case Number 00CS01446, in the Superior Court of the State of California, County of Sacramento.
4. *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.
5. *San Diego Unified School District and San Juan Unified School District v. Commission on State Mandates, et al.*, Case Number 00CS00810, in the Superior Court of the State of California, County of Sacramento.

6. *State of California, Department of Finance v. Commission on State Mandates, Kern Union High School District; San Diego Unified School District, County of Santa Clara*, Case Number C037645, in the Court of Appeal, Third Appellate District.
7. *City of San Diego v. Commission on State Mandates, et al.* Case Number GIC751187, in the Superior Court of the State of California, County of San Diego.
8. *County of Los Angeles v. Commission on State Mandates, et al.*, Case Number BS064497, in the Superior Court of the State of California, County of Los Angeles.
9. *County of San Bernardino v. Commission on State Mandates, et al.* Case Number BS06911, in the Superior Court of the State of California, County of Los Angeles.
10. *County of San Bernardino v. Commission on State Mandates of the State of California et al.*, Case Number SCVSS72444, in the Superior Court of the State of California, County of San Bernardino.
11. *County of San Diego v. Commission on State Mandates, et al.*, Case Number GIC762953, in the Superior Court of the State of California, County of San Diego.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).)

B. PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from the Personnel Sub-Committee on the selection and appointment of the Attorney/Chief Legal Counsel (C.E.A.) pursuant to Government Code sections 17529 and 19889 et seq.

IX. REPORT FROM CLOSED EXECUTIVE SESSION

ADJOURNMENT

For information, contact Paula Higashi, Executive Director, at (916) 323-3562.

ITEM 2

TEST CLAIM FINAL STAFF ANALYSIS

Penal Code sections 290 and 290.4
Statutes of 1996, Chapters 908 and 909
Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822
Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Sex Offenders: Disclosure by Law Enforcement Officers

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42 U.S.C.A. section 3756	1507
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ITEM 2
TEST CLAIM
FINAL STAFF ANALYSIS

Penal Code Sections 290 and 290.4

Statutes of 1996, Chapters 908 and 909

Statutes of 1997, Chapters 17, 80, 817, 818, 819, 820, 821 and 822

Statutes of 1998, Chapters 485, 550, 927, 928, 929 and 930

Sex Offenders: Disclosure by Law Enforcement Officers

EXECUTIVE SUMMARY

Background

The test claim legislation (Penal Code sections 290 and 290.4) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access and distribution of this information to local law enforcement agencies.

Claimant's Position

Claimant contends that the test claim legislation imposes a reimbursable state mandate for the following activities:

1. Registration (§290, subdivision (a))
2. Record Retention (§290, subdivision (o))
3. Reporting to the Department of Justice (§290, subdivisions (b)(2), (e)(3) and (f)(1))
4. Records Destruction (§290, subdivision (d)(5))
5. Notification of Change of Address (§290, subdivision (f))
6. Notice of Prohibited Conduct (§290, subdivision (l)(1))
7. Disclosure of Information to the Public (§290, subdivision (m))
8. Public Access to CD-ROM & File Maintenance (§290.4, subdivision (a)(4)(A))

Department of Finance's Position

Department of Finance contends that although the test claim legislation may result in additional costs to local law enforcement agencies these costs are not reimbursable. According to the Department of Finance, the test claim legislation results in "costs mandated by the federal government" and does no more than implement federal law relating to the public disclosure of the identity of certain sex offenders.

Staff Analysis

Staff's analysis is divided into two parts. Part 1 concerns new crimes and new timelines that an individual must register for as a convicted sex offender with the local law enforcement agency. Part 2 relates to the remaining activities presented by the test claim legislation and includes whether some or all of these activities are a "new program or higher level of service" and impose "costs mandated by the state" on local law enforcement agencies.

Part 1

The only issue presented by Part 1, "Registration for New Crimes and Timelines," is whether this portion of the test claim legislation creates a new crime and thus does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

Article XIII B, section 6 of the California Constitution provides that the Legislature may not provide subvention of funds for mandates that define a new crime or change the existing definition of a crime. Article XIII B, section 6 was codified by Government Code section 17556, subdivision (g), and provides that there are no "costs mandated by the state" when the statute created a new crime or infraction.

The test claim legislation expanded the list of crimes in which a convicted sex offender must register for to include kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object as well as pimping, pandering and aggravated sexual assault of a child. Under prior law, a sex offender convicted of these crimes did not have to register as a sex offender. Now, under the test claim legislation, if these convicted sex offenders fail to register, they will be guilty of a misdemeanor, felony and/or a continuing offense. Accordingly, staff finds that this portion of the test claim legislation creates a new crime.

The test claim legislation also created new time periods in which certain convicted sex offenders must register including when an offender has multiple addresses, is a sexually violent predator or changes his or her name. Like the above new crimes, failure to register within the proscribed timelines is a misdemeanor, felony and/or a continuing offense. Accordingly, staff finds that this portion of the test claim legislation also creates a new crime.

Conclusion – Part 1

Therefore, based on the foregoing, a convicted sex offender's "Duty to Register for New Crimes and Timelines" does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

Part 2

Part 2 relates to the remaining activities presented by the test claim legislation and includes whether some or all of these activities are a “new program or higher level of service” and impose “costs mandated by the state” under XIII B, section 6 of the California Constitution and Government Code section 17514.

Is the Test Claim Legislation a New Program or Higher Level of Service?

Staff finds that Part 2 of the test claim legislation is a “program” within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Staff further finds that the following activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution. Staff’s analysis of these activities begins on page 14.

- Submission of Registered Sex Offender information to the Department of Justice’s Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- Community Notification (§290, subdivision (m))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Does the Test Claim Legislation Impose “Costs Mandated by the State”?

Under Government Code section 17514 a new program or higher level of service must impose “costs mandated by the state.” However, under Government Code section 17556, subdivision (c), the Commission shall not find “costs mandated by state” if the test claim legislation implemented a federal law.

In order to determine if the federal exception applies to the test claim legislation, the Commission must first determine if the test claim legislation implemented federal law and resulted in “costs mandated by the federal government.” If so, the Commission must then determine if the test claim legislation exceeds the scope of federal law.

There are three federal enactments that concern the test claim legislation: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan’s Law and the Pam Lychner Sexual Offender Tracking and Identification Act. The collective result of these enactments is codified in 42 U.S.C. 14071-72 (referred to below as “section 14071”) and represents the federal law in this matter.

Section 14071 provides a financial incentive for states to establish 10 year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders characterized as “sexually violent predators.” States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in funding for HIV testing.

Did the Test Claim Legislation Implement Section 14071?

The legislative history of the test claim legislation shows that it was enacted to implement section 14071. Assembly Bill 1562 specifically states that the passage of the test claim legislation “will launch Megan’s Law in California and fulfill the requirements of the federal law.” “Failure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ...funding.” Thus, staff finds that the test claim legislation implemented federal law.

Does the Test Claim Legislation Result in Costs Mandated by the Federal Government?

“Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet a specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state.

The legislative history of the test claim legislation shows that if California refused to implement section 14071, it would lose substantial funds for HIV testing. Thus, although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders. Accordingly, staff finds that the test claim legislation implemented a federal law and resulted in costs mandated by the federal government.

Does the Test Claim Legislation Exceed the Federal Mandate?

Because the federal exception does not apply if the test claim legislation imposes costs that exceed the federal law, the Commission must compare the test claim legislation to the federal law to determine which costs or activities exceed the federal law. Staff has compared the activities imposed by the test claim legislation to section 14071, starting with page 26. Below is a list of activities imposed by the test claim legislation that exceed section 14071:

- Submission of Registered Sex Offender information to the Department of Justice’s Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))

- Records Retention (§290, subdivision (o))

Conclusion – Part 2

Staff finds that Part 2 of the test claim legislation is a “program” within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Staff further finds that the following required activities, as outlined in more detail above, are a “new program or higher level of service” under article XIII B, section 6 of the California Constitution and result in “costs mandated by the state” within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice’s Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Lastly, staff finds that all other activities in the test claim legislation do not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends that the Commission approve the staff analysis.

Claimant

County of Tuolumne

Chronology

12/30/97	Claimant files test claim with Commission.
02/06/98	Department of Finance files comments on test claim regarding "disputed" status of test claim as it relates to the extension of timelines.
05/19/98	Department of Finance files comments to the merits of the test claim.
07/14/99	Claimant files amended test claim.
09/10/99	Department of Finance files comments on amended test claim.
10/26/99	Claimant files reply to Department of Finance's comments to amended test claim.
04/02/01	Commission staff issues draft staff analysis.
04/30/01	Claimant files comments to draft staff analysis.
04/30/01	Department of Finance requests an extension to file comments to draft staff analysis.
05/22/01	Department of Finance requests a second extension to file comments to draft staff analysis.
07/09/01	Department of Finance files comments to draft staff analysis.

Test Claim Legislation

The test claim legislation (Penal Code sections 290 and 290.4¹) concerns the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies. Section 290 specifically relates to the registration of these sex offenders when they are released from incarceration, when they move or change their temporary or permanent residence or when they update their registration on an annual basis. Section 290 also allows local law enforcement agencies to disclose the identities of sex offenders to the public when a peace officer reasonably suspects that it is necessary to protect the public. Section 290.4 requires the Department of Justice to continually compile and maintain information regarding the identity of convicted sex offenders and to establish a "900" telephone number and CD-ROM program for public access of this information. The Department of Justice must distribute the information obtained on convicted sex offenders by CD-ROM or other electronic medium to local law enforcement agencies who in turn "may" then provide public access to the information. However, municipal police departments of cities with a population of less than 200,000 are exempt from this requirement.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Claimant's Position

Claimant contends that the test claim legislation imposes a reimbursable state mandate for the following activities:²

1. Registration (§290, subdivision (a))
2. Record Retention (§290, subdivision (o))
3. Reporting to the Department of Justice (§290, subdivisions (b)(2), (e)(3) and (f)(1))
4. Records Destruction (§290, subdivision (d)(5))
5. Notification of Change of Address (§290, subdivision (f))
6. Notice of Prohibited Conduct (§290, subdivision (l)(1))
7. Disclosure of Information to the Public (§290, subdivision (m))
8. Public Access to CD-ROM & File Maintenance (§290.4, subdivision (a)(4)(A))

Department of Finance's Position

Department of Finance concedes that the test claim legislation may result in additional costs to local law enforcement agencies. Nonetheless, Department of Finance contends that these costs are not reimbursable, because the test claim legislation results in "costs mandated by the federal government." Specifically, Department of Finance asserts that the test claim legislation does no more than implement federal law relating to the public disclosure of the identity of certain sex offenders. Department of Finance contends:

1. Section 17556(c) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order implemented a federal law or regulation and resulted in "costs mandated by the federal government," unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.

2. Section 17513 of that Code defines "costs mandated by the federal government" as "...Any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation." "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the option of the state, local agency, or school district.

² Although claimant has only specifically claimed reimbursement for certain portions of the test claim legislation, claimant has included all of its provisions by reference.

Staff Analysis

In order for a statute or an executive order to impose a reimbursable state mandated program under article XIII B, section 6 of the California Constitution³ and Government Code section 17514,⁴ the statutory language must first direct or obligate an activity or task upon local governmental agencies. If the statutory language does not direct or obligate local agencies to perform a task, then compliance with the test claim statute or executive order is within the discretion of the local agency and a reimbursable state mandated program does not exist.

In addition, the required activity or task must constitute a new program or create a higher level of service over the former required level of service. The California Supreme Court has defined the word “program,” subject to article XIII B, section 6 of the California Constitution, as a program that carries out the governmental function of providing a service to the public, or laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. To determine if the “program” is new or imposes a higher level of service, a comparison must be made between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the new program or increased level of service must impose “costs mandated by the state.”⁵

The analysis is divided into two parts. Part 1 concerns new crimes and new timelines that an individual must register for as a convicted sex offender with the local law enforcement agency. Part 2 relates to the remaining activities presented by the test claim legislation and includes whether some or all of these activities are a “new program or higher level of service” and impose “costs mandated by the state” on local law enforcement agencies.

At the outset, staff notes that the test claim legislation is a complex and comprehensive statutory scheme concerning the registration of certain convicted sex offenders and the disclosure of their identity to the public. It imposes duties on law enforcement agencies at every level of government, including local law enforcement agencies and the Department of Justice, as well as the convicted sex offender. However, despite the far-reaching span of the test claim legislation, staff has limited its analysis to those activities that may potentially be imposed on local law enforcement agencies.

³ Article XIII B, section 6 of the California Constitution provides: “Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.”

⁴ Government Code section 17514 provides: “Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

⁵ Article XIII B, section 6 of the California Constitution; *County of Los Angeles v. State of California*, *supra*, 43 Cal.3d at 56; *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 66; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835; Government Code section 17514.

In addition, claimant seeks reimbursement under sections 290 and 290.4 of the Penal Code and included the Statutes of 1996 through the Statutes of 1998 and their corresponding Chapters. In 1996 sections 290 and 290.4 were enacted by an “urgency statute” and became effective on September 25, 1996. Thus, when analyzing prior law, staff is referring to that law which was in effect on September 24, 1996.

PART 1 –REGISTRATION FOR NEW CRIMES AND TIMELINES

The only issue presented by Part 1, “Registration for New Crimes and Timelines,” is whether this portion of the test claim legislation creates a new crime and thus does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

Article XIII B, section 6 of the California Constitution provides that the Legislature may not provide subvention of funds for mandates that define a new crime or change the existing definition of a crime. Section 6 specifically states:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:

- (a) Legislative mandates requested by the local agency affected
- (b) Legislation **defining a new crime or changing an existing definition of a crime**; or [Emphasis added.]
- (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

Article XIII B, section 6 was codified by Government Code section 17556, subdivision (g), and provides that there are no “costs mandated by the state” when:

The statute **created a new crime or infraction**, eliminated a crime or infraction, or changed the penalty for a new crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction. [Emphasis added.]

Claimant contends that the registration requirements in the test claim legislation, section 290, subdivision (a), which includes the duty to register and the time periods in which to register are a reimbursable state mandated program. As described below, the majority of crimes identified in the test claim legislation are not new crimes and have imposed a duty to register on convicted sex offenders for over fifty years. However, the test claim legislation has added some additional crimes that require registration by certain convicted sex offenders. If these individuals fail to register as a sex offender within a specific time period, the test claim legislation states that they are now guilty of a misdemeanor, felony and/or a continuing offense.

- **New Crimes That Require Registration**

Under prior law, any person, since July 1, 1944, who has been convicted in any court in California, another state or a federal or military court who has been released, discharged or paroled or who has been determined to be a mentally disordered sex offender must register under section 290 if convicted under the following offenses:

kidnapping; assault to commit rape, sodomy or oral copulation; aiding or abetting rape; lewd or lascivious acts involving children; penetration by a foreign object; sexual battery (includes seriously disabled or medically incapacitated victims); rape with a person who cannot give consent because of a mental or physical disability; rape against a person's will by means of force, violence, duress, menace or fear of immediate and unlawful bodily injury on the person or another; rape when a person cannot resist because of intoxication or anesthetic; rape when the person is unconscious; rape by threat of future harm; spousal rape; procurement; procurement of a child; abduction of a minor for prostitution; incest; sodomy; oral copulation; continuous sexual abuse of a child; production, distribution or exhibition of obscene matter; sexual exploitation of a child; employment of a minor in the sale or distribution of obscene matter or production of pornography; advertisement of obscene matters depicting minors; possession or control of child pornography; annoying or molesting children; loitering around public, open toilets for the purpose of soliciting any lewd or lascivious or unlawful act; indecent exposure; any felony violation for sending harmful matter to a minor or any crime that a court finds was committed as a result of sexual compulsion or for the purpose of sexual gratification.⁶

However, the test claim legislation⁷ now has expanded the list of crimes that require registration by convicted sex offenders and has essentially created a "new" crime, if individuals convicted of the below offenses fails to register within a specific time frame:

kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object⁸ as well as pimping, pandering and aggravated sexual assault of a child.⁹

If the offender fails to register as a sex offender for these new crimes, then the offender is guilty of a misdemeanor, felony and/or a continuing offense. Specifically, section 290 of the test claim legislation, subdivision (g)(1), provides:

⁶ Penal Code sections 207; 220; 264.1; 288; 272; 289; 243.4; 261, subdivision (a)(1); 261, subdivision (a)(2); 261, subdivision (a)(3); 261, subdivision (a)(4); 261, subdivision (a)(6); 262, subdivision (a)(1); 266; 266j; 267; 285; 286; 288a; 288.5; 311.2; 311.3; 311.4; 311.10; 311.11; 247, subdivision (a); 647, subdivision (d); 314; 288.2 and 290, subdivision (E).

⁷ Penal Code section 290, subdivision (a)(2)(A)-(E).

⁸ Penal Code sections 209, 261, 286, 288, 288a, and 289, Statutes of 1997, Chapter 817.

⁹ Penal Code sections 266, subdivisions (h)(b); 266, subdivisions (i)(b) and 269, Statutes of 1997, Chapter 818.

Any person who is required to register under this section based on a misdemeanor conviction who willfully violates any requirement of this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

In addition, subdivision (g)(2) provides:

[A]ny person who is required to register under this section based on a felony conviction who willfully violates any requirement of this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully violates any requirement of this section is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, or two or three years.

Also, subdivision (g)(7) provides:

Any person who is required to register under this section who willfully violates any requirement of this section is guilty of a continuing offense.

Thus, under prior law, a sex offender convicted of kidnapping for gain to commit robbery with intent to commit rape, sodomy, lewd or lascivious acts involving children, oral copulation or penetration by foreign object as well as pimping, pandering and aggravated sexual assault of a child, did not have to register as a sex offender. Now, under the test claim legislation, if these convicted sex offenders fail to register, they will be guilty of a misdemeanor, felony and/or a continuing offense.

Nonetheless, claimant contends that the test claim legislation only “expands the requirement of registration for sex offenders”¹⁰ and does not create a new crime or change the existing definition of a crime. Claimant’s contention is correct inasmuch as the list of crimes in which a sex offender must register for has been expanded. However, claimant’s analysis of this issue is short sided. Claimant fails to recognize that by adding these crimes the test claim legislation has created a “new” crime. As stated above, if these convicted sex offenders fail to register as a sex offender, they will now be guilty of a misdemeanor, felony and/or a continuing offense; whereas before the test claim legislation, they would not have been guilty of a crime. Accordingly, staff finds this portion of the test claim legislation creates a new crime.

- **New Time Periods in Which to Register**¹¹

Section 290 of the test claim legislation has also created new time periods in which certain convicted sex offenders must register including when an offender has multiple addresses, is a sexually violent predator or changes his or her name. Like the above new crimes, failure to register within the proscribed timelines is a misdemeanor, felony and/or a continuing offense.

Specifically, section 290 of the test claim legislation requires a convicted sex offender who has more than one residence to register in each jurisdiction where the offender resides. If the

¹⁰ See Exhibit H, pages 1377 to 1384, Comments of Claimant, County of Tuolumne, to Draft Staff Analysis.

¹¹ Penal Code section 290, subdivision (G) was added by the Statutes of 1999, Chapter 576 and pertains to the registration of out of state residents. This section was not analyzed by staff, because claimant did not include the Statutes of 1999 in the test claim. Nonetheless, subdivision (G) is similar to this portion of the test claim analysis inasmuch as it adds new timelines in which a convicted sex offender must register.

offender resides in one jurisdiction but has multiple addresses in that jurisdiction, then the offender must provide the local law enforcement agency in that jurisdiction with all addresses.¹² If the offender has no residence, the offender must update his or her registration no less than every 90 days with the local law enforcement agency in which the offender is located at the time of registration.¹³

Additionally, if the convicted sex offender is a sexually violent predator, then the offender must verify his or her address and place of employment including the name and address of the employer, no less than once every 90 days in a manner established by the Department of Justice.¹⁴

Lastly, if a convicted sex offender changes his or her name, the offender then must inform the local law enforcement agency where the offender is registered within 5 working days of the name change.¹⁵

As mentioned above, section 290 of the test claim legislation, subdivisions (g)(1)(2)(7), states that it is a misdemeanor, felony and/or a continuing offense if a convicted sex offender does not register as required under the test claim legislation. In addition, other provisions in section 290 state that it is a crime if a convicted sex offender does not register within a specified time period. Specifically, subdivision (g)(6) provides that:

Except as otherwise provided in paragraph (5), **and in addition to any other penalty imposed under this subdivision**, any person who is required pursuant to subparagraph (B) of paragraph (1) of subdivision (a) to update his or her registration every 90 days and willfully fails to update his or her registration is guilty of a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. Any subsequent violation of this requirement that persons described in subparagraph (B) of paragraph (1) of subdivision (a) shall update their registration every 90 days is also a misdemeanor and shall be punished by imprisonment in a county jail not exceeding six months. [Emphasis added.]

Subdivision (g)(5), provides that:

Any person who, as a sexually violent predator, as defined in Section 6600 of the Welfare and Institutions Code, fails to verify his or her registration every 90 days as required pursuant to subparagraph (D) of paragraph (1) of subdivision (a), shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year.

Accordingly, by adding additional timelines in which convicted sex offenders must register, section 290 of the test claim legislation defines a new crime. Under prior law, these convicted sex offenders had no duty to register in the proscribed time periods. Now, under section 290 of the test claim legislation, if they do not register or provide notification of a name change, the

¹² Penal Code section 290, subdivision (a)(1)(B), Statutes of 1998, Chapter 929.

¹³ Penal Code section 290, subdivision (a)(1)(C), Statutes of 1997, Chapter 820.

¹⁴ Penal Code section 290, subdivision (a)(1)(E), Statutes of 1997, Chapter 818.

¹⁵ Penal Code section 290, subdivision (f)(3), Statutes of 1996, Chapter 909.

offender may be guilty of a misdemeanor, felony or continuing offense. Accordingly, staff finds that this portion of the test claim legislation creates a new crime.

Conclusion

Based on the foregoing, a convicted sex offender's "Duty to Register for New Crimes and Timelines" does not impose a reimbursable state mandate under article XIII B, section 6 of the California Constitution and Government Code section 17556, subdivision (g).

PART 2 - REMAINING ISSUES PRESENTED BY THE TEST CLAIM LEGISLATION

Issue 1:

Is the test claim legislation a "program" within the meaning of article XIII B, section 6 of the California Constitution by carrying out either the governmental function of providing services to the public or imposing unique requirements on local law enforcement agencies?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the test claim legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program," within the meaning of article XIII B, section 6, as a program that carries out the governmental function of providing a service to the public, or laws, which to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.¹⁶ In *Carmel Valley*, the court held that only one of these findings is necessary to trigger the applicability of article XIII B, section 6.¹⁷

To determine whether the test claim legislation carries out the governmental function of providing services to the public, it is necessary to define the program in which the test claim legislation operates.

California courts have continually held that police and fire protection are two of the most basic functions of local government and are peculiarly governmental in nature.¹⁸ In the present case, the test claim legislation concerns police protection, because it relates specifically to the registration of certain convicted sex offenders and public disclosure of their identity by local law enforcement agencies.

Accordingly, staff finds that test claim legislation is a "program" within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

¹⁶ *County of Los Angeles*, *supra*, 43 Cal.3d 46, 56.

¹⁷ *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d at 537.

¹⁸ *Carmel Valley Fire Protection Dist.*, *supra*, 190 Cal.App.3d 537; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

Issue 2:

Is the test claim legislation a “new program or higher level of service” within the meaning of article XIII B, section 6 of the California Constitution?

To determine if a program is new or imposes a higher level of service, a comparison must be undertaken between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim legislation.¹⁹ As previously mentioned, the test claim legislation was enacted by an “urgency statute” and became effective on September 25, 1996. Thus, in analyzing prior law, staff has used that law in effect prior to the effective date of the test claim legislation or that law in effect on September 24, 1996.

A breakdown of the required activities imposed on local law enforcement agencies is as follows:

- **Change in Existing Timelines to Register**

Prior law required every convicted sex offender of a specified crime to register in the jurisdiction where the offender resides within 14 days of coming into the applicable jurisdiction and to update the registration within 10 days of the offender’s birthday.²⁰ The test claim legislation shortened these deadlines to within 5 working days of when an offender enters the applicable jurisdiction, and to within 5 working days of the offender’s birthday for annual updates.²¹

In addition, prior law required that the convicted sex offender register with the local law enforcement agency that the offender was last registered with in writing within 10 days of a change of address. Within three days after receipt of this information, the local law enforcement agency must forward a copy of the change of address or location to the Department of Justice. The Department of Justice shall forward the appropriate registration data to the local law enforcement agency or agencies having jurisdiction over the new place of residence or location.²² The test claim legislation is the same as prior law, except that the time period in which an offender has to report his or her change of address was changed from 10 days to 5 working days.

The mere shortening in time of registration deadlines does not change the level of service related to the above activities. Accordingly, there is no new program or higher level of service due to a change in the existing registration deadlines.

- **Violent Crime Information Network**

The test claim legislation states that “[t]he registering agency [local law enforcement agency] shall submit registrations, including annual updates or changes of address, directly into the Department of Justice Violent Crime Information Network (VCIN).”²³ There was no activity in prior law requiring local law enforcement agencies to submit registrations to VCIN. Therefore, this activity is a new program or higher level of service.

¹⁹ *County of Los Angeles*, *supra* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.*, *supra* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

²⁰ Penal Code section 290, subdivision (a), Statutes of 1984, Chapter 1419.

²¹ Penal Code section 290, subdivision (a)(1)(A), Statutes of 1996, Chapter 909.

²² Penal Code section 290, subdivision (e), Statutes of 1950, Chapter 70.

²³ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

- **Removal of Registration for Decriminalized Conduct**

The test claim legislation exempts a person from registering as a sex offender under specified conditions if the offender was convicted of sodomy or oral copulation between consenting adults prior to January 1, 1976. The Department of Justice is required to remove these individuals from the Sex Offender Registry. Upon notification from the Department of Justice that an offender should be removed from the register, the local law enforcement agency must remove the offender's registration from its files within 30 days from receipt of notification.²⁴ There was no activity in prior law providing for the decriminalization of this conduct. Therefore, the activity of removing an individual from a local law enforcement agency's file is a new program or higher level of service.

- **Notice of Duty to Register Upon Release, Discharge or Parole**

Prior law provides that any person who, after the first day of August, 1950, is discharged or paroled from a jail, prison, school, road camp, or other institution where the person was confined or is released from a state hospital to which he was committed as a psychopath be informed of the duty to register by the official in charge of the place of confinement before the offender is released. The official in charge must advise the convicted sex offender of the duty to register and must also have the offender read and sign a form that states this duty was explained to the offender. The official in charge of the offender's release must also obtain the address of where the person expects to reside and will report the address to the Department of Justice and to the local law enforcement agency or agencies having jurisdiction over the place that the offender expects to reside. The official in charge must give one copy of the form to the offender, send one copy to the Department of Justice and one copy to the local law enforcement agency or agencies having jurisdiction over the offender.²⁵

The test claim legislation contains the same "Notice of Duty to Register" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision (b)(1) and (2). Nonetheless, since the test claim legislation contains the same notification requirement on local law enforcement agencies as prior law, there is no new program or higher level of service related to this activity.

- **Destruction of Records**

Prior law provided that all records specifically relating to the registration of sex offenders in the custody of the Department of Justice, local law enforcement agencies and other agencies or public officials be destroyed when the offender required to register has his or her records sealed under the procedures set forth in section 781 of the Welfare and Institutions Code.²⁶

The test claim legislation contains the same "Destruction of Records" requirement as prior law, except that some non-substantive changes have been made including moving this section to 290, subdivision(d)(5). However, the requirement to destroy the records has remained the same. Thus, there is no new program or higher level of service related to this activity.

²⁴ Penal Code section 290, subdivision (a)(2)(F)(i), Statutes of 1997, Chapter 821.

²⁵ Penal Code section 290, subdivision (b), Statutes of 1950, Chapter 70.

²⁶ Penal Code section 290, subdivision (d)(6).

- **Pre-register**

The test claim legislation states that a convicted sex offender required to register under its provisions on or after January 1, 1998, shall also pre-register upon incarceration, placement or commitment or prior to release on probation. The pre-registering official shall be the admitting officer at the place of incarceration, placement or commitment or the probation officer if the person is to be released on probation. The pre-registration shall consist of a pre-registration statement in writing, signed by the person, giving information that shall be required by the Department of Justice, fingerprints and a photograph of the person.²⁷ Prior law contained no provision for the activity of pre-registering. Thus, to the extent that a local law enforcement agency must pre-register convicted sex offenders, this activity is a new program or higher level of service.

- **Contents of Registration Upon Release**

Prior law required that a convicted sex offender register upon release from incarceration, placement or commitment with the local law enforcement agency or agencies in which the offender resides. The registration must contain a statement in writing signed by the offender, giving information as may be required by the Department of Justice, fingerprints, a photograph of the offender and the license plate number of any vehicle owned by or registered in the name of the offender. Within three days of receiving this information, the registering law enforcement agency must forward this information to the Department of Justice.²⁸

In addition to the above requirements, the test claim legislation imposes some additional requirements on the convicted sex offender as well as local law enforcement agencies. With regard to the signed statement, in addition to the information required by the Department of Justice, the offender must also provide the name and address of his or her employer, and the address of the offender's place of employment if it is different from the employer's main address.²⁹ With regard to vehicle information, the convicted sex offender must also include information related to any vehicle regularly driven by the offender.³⁰ The offender must also be notified by the local law enforcement agency that in addition to the requirements of the test claim legislation, the offender may also have a duty to register in any other state where the offender may relocate.³¹

Lastly, the test claim legislation requires that the offender provide the local law enforcement agency with adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing the offender's name and address or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the offender shall advise the registering official and sign a statement provided by the registering official stating that fact.

²⁷ Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

²⁸ Penal Code section 290, Statutes of 1947, Chapter 1124. This provision, absent minor non-substantive changes, has remained the same since section 290 was originally enacted in 1947.

²⁹ Penal Code section 290, subdivision (e)(2)(A), Statutes of 1998, Chapter 930.

³⁰ Penal Code section 290, subdivision (e)(2)(C), Statutes of 1997, Chapter 927.

³¹ Penal Code section 290, subdivision (e)(2)(D), Statutes of 1997, Chapter 927.

Upon presentation of proof of residence to the registering official or a signed statement that the offender has no residence, the offender shall be allowed to register. If the offender claims that he or she has a residence but does not have any proof of residence, the offender shall be allowed to register but shall furnish proof of residence within 30 days of the day the offender is allowed to register.³²

Although the above activities are directed at the convicted sex offenders, they also require various activities on local law enforcement agencies to the extent that local law enforcement agencies have to compile this information so that it can be sent to the Department of Justice. Thus, the compiling of this additional data is a new program or higher level of service.

- **Notice of Reduction of Registration Period**

The test claim legislation requires that every convicted sex offender who was required to register before January 1, 1997, shall be notified whenever the offender next re-registers of the reduction in the registration period from 14 days to 5 working days. The notice must be in writing from the local law enforcement agency responsible for registering the individual.³³

Prior law required every convicted sex offender registering before January 1, 1985 to be notified of the reduction in the registration period from 30 to 14 days. Since the test claim legislation changes the registration period, a new notification is required.³⁴ Accordingly, the activity of notifying convicted sex offenders of the 14 to 5 day reduction in the timelines to register is a new program or higher level of service.

- **High-Risk Sex Offenders**

The test claim legislation provides that individuals considered to be high-risk offenders can be re-evaluated by the Department of Justice to be removed from the high-risk classification. This process does not involve law enforcement agencies except that the form for evaluation must be available at any sheriff's office. Thus, to the extent that a sheriff's office must maintain this form, there is a new program or higher level of service.³⁵

The test claim legislation also provides that the Department of Justice shall continually search its records and identify, on the basis of those records, high-risk offenders. Four times each year, the Department must provide each chief of police and sheriff in the state and any other designated law enforcement entity upon request information regarding the identity of high-risk sex offenders.

Department of Finance contends that although the Department of Justice must send this information to each chief of police and sheriff in the state, these law enforcement agencies can choose to disregard this information, because the test claim legislation does not impose any duty on them in this regard.³⁶ This assertion is misplaced. As discussed below, in the "Community Notification" section, subdivision (n) of section 290 requires local law enforcement agencies,

³² Penal Code section 290, subdivision (e)(2)(E), Statutes of 1997, Chapter 927.

³³ Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

³⁴ Penal Code section 290, subdivision (l), Statutes of 1985, Chapter 1474.

³⁵ Penal Code section 290, subdivision (n)(1)(G)(ii), Statutes of 1996, Chapter 908.

³⁶ See Exhibit K, pages 1393 to 1398, Department of Finance's letter dated July 9, 2001.

under certain circumstances, to disclose information about high-risk sex offenders to the public, which includes statistical information. Thus, to the extent that local law enforcement agencies need to compile this statistical data related to high-risk offenders, this activity is a new program or higher level of service.³⁷

- **Community Notification**

The test claim legislation permits a local law enforcement agency to disclose information about a convicted sex offender³⁸ or high-risk sex offender³⁹ under certain circumstances if a peace officer reasonably suspects that a child or other person is at risk. Specifically, the test claim legislation provides:

When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency **may**, notwithstanding any other provision of law, provide any of the information specified in paragraph (4) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

- (A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.
- (B) Other community members at risk. [Emphasis added.]

This information generally includes information that the agency deems relevant and necessary to protect the public and may include the following:

1. The offender's full name.
2. The offender's known aliases.
3. The offender's gender.
4. The offender's race.
5. The offender's physical description.
6. The offender's photograph.
7. The offender's date of birth.
8. Crimes resulting in registration.
9. The offender's address, which must be verified prior to publication.

³⁷ Penal Code section 290, subdivision (n)(2), Statutes of 1996, Chapter 908.

³⁸ Penal Code section 290, subdivision (m), Statutes of 1996, Chapter 908.

³⁹ Penal Code section 290, subdivision (n), Statutes of 1996, Chapter 908.

10. Description and license plate number of offender's vehicles or vehicles the offender is known to drive.
11. Type of victim targeted by the offender.
12. Relevant parole or probation conditions, such as one prohibiting contact with children.
13. Dates of crimes resulting in classification under the test claim legislation.
14. The date of release from confinement.⁴⁰

Although it is a well-settled principle of statutory construction that the word "may" is ordinarily construed as permissive and "shall" is ordinarily construed as mandatory, there are situations in which "may" is interpreted to mean "shall."⁴¹ In *Los Angeles County v. State*,⁴²

the Third District Court of Appeal held:

The word "may" as used in a statute or constitution is often interpreted to mean "shall" or "must." Such interpretation always depends largely, if not altogether, on the object sought to be accomplished by the law in which the word is used. It seems to be the uniform rule that, where the purpose of the law is to clothe public officers with power to be exercised for the benefit of third persons, or for the public at large – that is, where the public interest or private rights requires that the thing be done then the language, though permissive in form, is peremptory . . .

Since a peace officer is a "public officer,"⁴³ if a peace officer reasonably suspects that a child or another person is at risk from a sex offender or high-risk sex offender, the peace officer must notify certain members of the public that may be in danger from the sex offender. There was no activity in prior law related to community notification of sex offenders. Thus, the community notification activity is a new program or higher level of service.⁴⁴

• CD ROM

The test claim legislation states that on or before July 1, 1997, the Department of Justice shall provide a CD-ROM or other electronic medium containing information about certain sex offenders and shall update and distribute the CD-ROM or other electronic medium on a monthly basis to sheriff's departments in each county, municipal police departments of cities with a population of more than 200,000 and other law enforcement agencies. The local law enforcement agencies "may" obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription

⁴⁰ Penal Code section 290, subdivision (m)(4), Statutes of 1996, Chapter 908.

⁴¹ *Common Cause of California v. Board of Supervisors of L.A. County* (1989) 49 Cal.3d 432, attached as Exhibit L, pages 1399 to 1412.

⁴² *Los Angeles County v. State* (1923) 64 Cal.App.290, attached as Exhibit M, pages 1413 to 1418.

⁴³ Government Code section 195 and Evidence Code section 200, attached as Exhibit N, pages 1419 to 1422.

⁴⁴ Department of Finance disagrees with staff's conclusion that this activity is a new program of higher level of service, because the claimed activity is not a "specified State requirement." See Exhibit K, pages 1393 to 1398.

fee and “may” make the CD-ROM or other electronic medium available for viewing by the public.⁴⁵

Like the Community Notification activity above, the use of the term “may,” though permissive in form, is peremptory. In fact, according to the legislative history, it was the legislative intent that the CD-ROM or other electronic medium shall be made available to the public.⁴⁶ Assembly Bill 1562 states that:

Knowing the identity of sex registrants empowers parents to protect their children from exposure to persons who might do them harm. Likewise, adult victims would similarly be empowered. It deters sex offenders from re-offending by increasing public awareness of their proclivities, thereby discouraging them from contact with children.⁴⁷

Moreover, the California Department of Justice evaluated patterns of sex offenders and conducted a 15-year follow-up of sex offenders first arrested in 1973. The Department of Justice found:

An analysis of subsequent arrests over the 15-year period (1973-1988) found that nearly one-half (49.4%) were re-arrested for some type of offense and almost 20% (19.7%) for a subsequent sex offense. Sex offenders whose first arrest was for rape by force or threat had the highest recidivism rate, 63.4% for any offense and 25.5% for a subsequent offense. The high recidivist rate could be attributed, in part, to the anonymity of the sex offender.⁴⁸

Accordingly, the test claim legislation requires that the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000⁴⁹ and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium. Prior law had no provision related to this activity. Thus, this activity is a new program or higher level of service.

- **Records Retention**

The test claim legislation requires local law enforcement agencies to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five

⁴⁵ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

⁴⁶ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, page 2, paragraph 12, attached as Exhibit O, pages 1423 to 1430.

⁴⁷ *Supra*, page 4, paragraph 3.

⁴⁸ *Supra*, page 4, paragraph 4.

⁴⁹ In Exhibit K, pages 1393 to 1398, Department of Finance contends that staff has included municipal police departments of cities with a population of less than 200,000 as an entity subject to reimbursement. Staff believes that Department of Finance has misread this portion of the analysis. This portion of the test claim legislation does not apply to these entities.

years related to the disclosure of high-risk offenders.⁵⁰ There is no records retention activity under prior law related to CD-ROM or other electronic medium. Accordingly, the records retention activity is a new program or higher level of service.

Conclusion

Based on the foregoing, the following activities are a new program or higher level of service under article XIII B, section 6 of the California Constitution:

- Submission of Registered Sex Offender information to the Department of Justice's Violent Crime Information Network by Local Law Enforcement Agencies (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- Community Notification (§290, subdivision (m))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

However, the analysis must continue to determine if the above activities impose "costs mandated by the state," under Government Code section 17514.

Issue 3:

Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code section 17514?

Under Government Code section 17514 a new program or higher level of service must impose "costs mandated by the state." However, under Government Code section 17556, subdivision (c), the Commission **shall not** find "costs mandated by state" if the test claim legislation implemented a federal law.

Government Code section 17556, subdivision (c), provides that there are no "costs mandated by the state" when:

(c) The statute or executive order implemented a federal law or regulation **and** resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation. [Emphasis added.]

Government Code section 17513 defines "costs mandated by the federal government" as:

⁵⁰ Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

... any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation. "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state**, local agency, or school district. [Emphasis added.]

- **Federal Law**

History of the Federal Law

There are three federal enactments that concern the test claim legislation: the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, Megan's Law and the Pam Lychner Sexual Offender Tracking and Identification Act. The collective result of these enactments is codified in 42 U.S.C. 14071-72 (referred to below as "section 14071")⁵¹ and represents the federal law in this matter. These three enactments are as follows:

1. The Wetterling Act, which was enacted by section 170101 of the Violent Crime Control and Law Enforcement Act of 1994,⁵² encourages states to establish an effective sex offender registration system.
2. Megan's Law,⁵³ which amended the provisions of the Wetterling Act, relates to the release of registration information.
3. The Lychner Act,⁵⁴ which makes further amendments to the Wetterling Act, contains provisions to ensure the nationwide availability of sex offender registration information to law enforcement agencies.

The federal Department of Justice issued guidelines for state compliance with the original version of the Wetterling Act⁵⁵ and has more recently published guidelines to implement Megan's Law and clarify other issues concerning Wetterling Act compliance, or section 14071.⁵⁶

⁵¹ 42 U.S.C.A. section 14072 is not relevant to the test claim as it specifically deals with the FBI database. Thus, section 14072 will not be part of the staff analysis. 42 U.S.C.A. section 14071, attached as Exhibit P, pages 1431 to 1444.

⁵² 42 U.S.C.A. section 14071, Public Law 102-322, 108 Stat. 1796, 2038.

⁵³ 42 U.S.C.A. section 14071, Public Law 104-145, 110 Stat. 1345, May 17, 1996.

⁵⁴ 42 U.S.C.A. section 14071, Public Law 104-236, 110 Stat. 3096, 3097, October 3, 1996.

⁵⁵ 61 FR 15110 (issued April 4, 1996), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration, attached as Exhibit Q, pages 1445 to 1462.

⁵⁶ 64 FR 572 (issued January 5, 1999) and 64 FR 3590 (issued January 22, 1999), Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexual Violent Offender Registration, attached as Exhibit R, pages 1463 to 1498.

Overview of Section 14071

Section 14071 provides a financial incentive for states to establish 10 year registration requirements for persons convicted of certain crimes against minors and sexually violent offenses and to establish a more stringent set of registration requirements for a sub-class of highly dangerous sex offenders characterized as “sexually violent predators.” States that fail to establish such systems within three years (subject to a possible two year extension) face a 10% reduction in funding for HIV testing.⁵⁷

In order to determine if the federal exception applies to the test claim legislation, the Commission must first determine if the test claim legislation implemented section 14071 and resulted in “costs mandated by the federal government.” If so, the Commission must then determine if the test claim legislation exceeds the scope of section 14071.

- **Analysis**

Did the Test Claim Legislation Implement Section 14071?

The legislative history of the test claim legislation shows that it was enacted to implement section 14071. Assembly Bill 1562 specifically states that the passage of the test claim legislation “will launch Megan’s Law in California and fulfill the requirements of the federal law.” “Failure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ...funding.”⁵⁸

In addition, section 14071 specifically provides that states must comply/implement its provisions or lose funding for HIV testing. Section 14071 states that the Attorney General shall establish guidelines for state programs for certain individuals convicted of specified sexual offenses.⁵⁹ As mentioned above, the Attorney General issued these guidelines in 1996 and revised and reissued them again in 1999. Section 14071 specifically outlines the provisions that a state registration program must contain⁶⁰ and specifies the dates in which states must comply with section 14071 as well as the consequences if a state fails to comply with its provisions.⁶¹

Accordingly, staff finds that the test claim legislation implemented section 14071.⁶² However, the analysis must continue to determine if the test claim legislation results in “costs mandated by the federal government.”

⁵⁷ 42 U.S.C.A. section 3756, subdivision (f), attached as Exhibit S, pages 1499 to 1504.

⁵⁸ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

⁵⁹ 42 U.S.C.A., section 1407(a), Public Law 103-322, 108 Stat. 2038.

⁶⁰ 42 U.S.C.A., section 1407(b), Public Law 103-322, 108 Stat. 2038.

⁶¹ 42 U.S.C.A., section 1407(f)(1)(2), Public Law 103-322, 108 Stat. 2038.

⁶² In order to determine if the test claim legislation implemented the federal legislation, staff analyzed the law in effect in 1996, when the federal legislation was implemented. However, staff notes that the provisions in the federal legislation have substantively remained the same over the years.

Does the Test Claim Legislation Result in Costs Mandated by the Federal Government?

“Costs mandated by the federal government” includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet a specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. However, “costs mandated by the federal government” does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services **which may be implemented at the option of the state, local agency or school district.**⁶³ [Emphasis added.]

In order to determine if the test claim legislation was “implemented at the option of the state,” California courts, including the California Supreme Court, have held that “[t]he test for determining whether there is a federal mandate is whether compliance with federal standards ‘is a matter of true choice,’ that is, whether participation in the federal program ‘is truly voluntary.’”⁶⁴ The *Hayes* court in following the California Supreme Court’s decisions in *City of Sacramento v. State of California (Sacramento II)*,⁶⁵ held that a “determination of whether compliance with a federal law is mandatory or optional must depend on such factors as the nature and purpose of the federal program; whether its design suggests an intent to coerce; when state and/or local participation began; the penalties, if any, assessed for withdrawal or refusal to participate or comply; and any other legal and practical consequences of nonparticipation, noncompliance or withdrawal.”⁶⁶ Application of these factors in the present case is as follows:

- **Nature and Purpose of the Federal Program** - The federal legislation was enacted to provide the public with information regarding certain convicted sex offenders. The centerpiece of the test claim legislation, the registration and notification provisions related to convicted sex offenders, has its genesis in a New Jersey murder case. On July 29, 1994, Megan Kanka was raped and asphyxiated to death by Jesse Timmendequas, Megan's thirty-three year old neighbor. Unbeknownst to Megan's parents, Timmendequas was a convicted child molester living in a nearby home with two other convicted pedophiles. The brutal murder of this young girl shocked the nation, and catapulted the issue of sexually violent crimes against children onto a national stage.
- **Whether the Federal Statute Suggests an Intent to Coerce** – Although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders. According to the test claim legislation, “[a] state that fails to implement the program as described in this section [the test claim legislation] shall not receive

⁶³ Government Code section 17513.

⁶⁴ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1581; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

⁶⁵ *City of Sacramento v. State of California* (1990) 50 Cal.3d 51.

⁶⁶ *Hayes v. Commission on State Mandates* (1992) 11 Cal.App.4th 1564, 1582; *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 76.

10 percent of the funds that would otherwise be allocated to the State under section 3756 of this title.”⁶⁷ Section 3756 provides:

(a) States

Subject to subsection (f) of this section, of the total amount appropriated for this subchapter in any fiscal year, the amount remaining after setting aside the amount required to be reserved to carry out section 3761 of this title shall be set aside for section 3752 of this title and allocated to States as follows:

(1) \$500,000 or 0.25 percent, whichever is greater, shall be allocated to each of the participating States; and

(2) of the total funds remaining after the allocation under paragraph (1), there shall be allocated to each State an amount which bears the same ratio to the amount of remaining funds described in this paragraph as the population of such State bears to the population of all the States.⁶⁸

Subsection (f) provides for the testing of certain sex offenders for human immunodeficiency virus.⁶⁹

In addition, as discussed above, the legislative history of the test claim legislation shows that if California refused to implement section 14071, it would lose substantial funds for HIV testing. Specifically, Assembly Bill 1562 states that “[f]ailure to act would constitute non-compliance with the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act and result in the loss of nearly \$5 million in ... funding.”⁷⁰ Clearly, the Legislature believed that such a loss in funding was “substantial,” since it was the basis of compliance with section 14071.

Thus, although no monetary penalties would be assessed against the state for failure to implement section 14071, it would lose substantial funds for HIV testing of certain sex offenders.

- **When State and/or Local Participation Began** – Section 170101 of the Violent Crime Control and Law Enforcement Act was enacted on September 13, 1994. Congress amended and President Clinton signed the Wetterling Act portion of section 14071 in May of 1996. The test claim legislation was enacted by an “urgency statute” and became effective on September 25, 1996.
- **The Penalties, if any Assessed for Withdrawal or Refusal to Participate or Comply** – There are no penalties if a state fails to comply with the federal

⁶⁷ 42 U.S.C.A. section 1407(a), 108 Stat. 2038.

⁶⁸ 42 U.S.C.A. section 3756(a), 108 Stat. 2138.

⁶⁹ 42 U.S.C.A. section 3756(f), 108 Stat. 2138.

⁷⁰ Assem. Bill No. 1562 (1995-1996 Reg. Sess.) Proposed Conference Report No. 1, August 27, 1996, pages 5 and 6.

legislation. However, as mentioned above, failure to comply will result in a loss of federal funding for HIV testing for certain sex offenders.

- **Any Other Practical or Legal Consequence of Nonparticipation, noncompliance or withdrawal** - Practically speaking, California, like all the other states, had no choice but to comply with the federal legislation or lose substantial funding.

Based on the above factors, staff finds that the state had no “true choice” but to comply with the provisions of section 14071. Accordingly, the test claim legislation implemented a federal law and resulted in costs mandated by the federal government.⁷¹

However, the federal exception does not apply to the extent that the test claim legislation mandates costs that exceed the mandate in that federal law or regulation.⁷² Thus, the Commission must compare the test claim legislation to the federal legislation to determine which costs or activities exceed the federal mandate.

Does the Test Claim Legislation Exceed the Federal Mandate?

In order to determine if the test claim legislation exceeds section 14071, staff has compared the activities imposed by the test claim legislation to section 14071 below. However, before comparing the test claim legislation and section 14071, it should be noted that section 14071 was not intended to, and does not have the effect of, making states less free than they were under prior law to impose such requirements. Hence, section 14071’s standards constitute a floor for state programs, not a ceiling. States do not have to go beyond sections 14071’s minimum requirements to maintain eligibility for funding, but they may retain the discretion to do so. State programs often contain elements that are not required under section 14071.⁷³

Activities Imposed by the Test Claim Legislation	Federal Mandate Section 14071.
Violent Crime Information Network ⁷⁴	Section 14071 has no requirement that the state establish a Violent Crime Information System. Thus, this activity exceeds the federal mandate. ⁷⁵
Removal of Registration for Decriminalized Conduct ⁷⁶	Section 14071 has no provision related to the activity of removing a registration for decriminalized conduct. Thus, this activity exceeds the federal mandate.

⁷¹ Government Code section 17556, subdivision (c).

⁷² *Ibid.*

⁷³ 64 FR 572.

⁷⁴ Penal Code section 290, subdivision (a)(1)(F), Statutes of 1998, Chapter 929.

⁷⁵ 42 U.S.C.A. section 14071, subdivision (b)(2)(3)(4), 108 Stat. 2038.

⁷⁶ Penal Code section 290, subdivision (F)(i)(I)(II)(III), Statutes of 1997, Chapter 821.

Pre-register ⁷⁷	Section 14071 has no provision related to the activity of pre-registering convicted sex offenders. Thus, this activity exceeds the federal mandate.
Contents of Registration Upon Release ⁷⁸	The only activity in section 14071 related to the registration activities in the test claim legislation is the requirement that local law enforcement agencies advise a convicted sex offender of a possible duty to register in any other state where the offender resides. ⁷⁹ Thus, with the exception of this activity, section 14071 does not have a specific mandate related to the registration activities imposed by the test claim legislation.
Notice of Reduction of Registration Period ⁸⁰	Section 14071 has no provision related to the notice activity. Thus, this activity exceeds the federal mandate
High-Risk Sex Offenders ⁸¹	Section 14071 has no provision related to the activities associated with high-risk sex offenders. Thus, this activity exceeds the federal mandate.
Community Notification ⁸²	Section 14071 provides that any local law enforcement agency “may” release relevant information about a convicted sex offender that is necessary to protect the public concerning a specific person required to register. ⁸³ In the context of this section, the use of the term “may,” though permissive in form, is peremptory. ⁸⁴ Thus, the community notification activity is a federal mandate and not a “cost mandated by the state.”

⁷⁷ Penal Code section 290, subdivision (e)(1)(A)(B)(C), Statutes of 1997, Chapter 821.

⁷⁸ Penal Code section 290, subdivision (e)(2)(A)(B)(C)(D)(E), Statutes of 1997, Chapter 927.

⁷⁹ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁸⁰ Penal Code section 290, subdivision (l), Statutes of 1997, Chapter 821.

⁸¹ Penal Code section 290, subdivision (n)(1)(G)(ii)(2), Statutes of 1996, Chapter 908.

⁸² Penal Code section 290, subdivision (m)(n), Statutes of 1996, Chapter 908.

⁸³ 42 U.S.C.A. section 14071, subdivision (b)(iii), Public Law 103-322, 108 Stat. 2038.

⁸⁴ See pages 18-20 of the final staff analysis for staff’s analysis of “may” in the context of this section.

CD ROM ⁸⁵	Although section 14071 has no provision related to the CD-ROM activity, Department of Finance contends that this activity merely implements federal law, because 42 U.S.C.A. 14071, subdivision (e)(2), states that “the State or any agency authorized by the State shall release relevant information that is necessary to protect the public concerning a specific person required to register under this section.” ⁸⁶ This contention is incorrect. Section 14071 does not require the relevant information to be released by CD ROM. Thus, this activity exceeds the federal mandate.
Records Retention ⁸⁷	Section 14071 has no provision related to the record retention activity. Thus, this activity exceeds the federal mandate.

In summary, the following activities imposed by the test claim legislation exceed section 14071, the federal mandate, and thus result in “costs mandated by the state:”

- **Violent Crime Information Network**

This activity requires a local law enforcement agency to submit sex offender registrations from its jurisdictions directly into the Department of Justice Violent Crime Information Network

- **Removal of Registration for Decriminalized Conduct**

This activity requires a local law enforcement agency to remove an offender’s registration from its files within 30 days of receiving a notification to do so from the Department of Justice.

- **Pre-register**

This activity requires the admitting officer of a local law enforcement agency to pre-register a convicted sex offender but only if the local law enforcement agency is the place of incarceration. This pre-registration consists of a pre-registration statement in writing, signed by the person, giving information that is required by the Department of Justice, fingerprints and a current photograph of the offender.

- **Contents of Registration Upon Release**

A convicted sex offender has always had the duty to register upon release with the local law enforcement agency in which the offender will reside.

⁸⁵ Penal Code section 290.4, subdivision (a)(4)(A), Statutes of 1996, Chapter 908.

⁸⁶ Department of Finance’s Comments to Draft Staff Analysis, attached as Exhibit K, pages 1393 to 1398.

⁸⁷ Penal Code section 290, subdivision (o), Statutes of 1996, Chapter 908.

While most of the activities related to this registration falls on the convicted sex offender, the following related activities are imposed on the registering local law enforcement agency:

1. The local law enforcement agency must ensure that the signed statement that a convicted sex offender must fill out upon registration contains the name and address of the offender's employer, and the address of the offender's place of employment if that is different from the employer's main address.
2. The local law enforcement agency must ensure that the convicted sex offender includes information related to any vehicle regularly driven by the offender on the registration.
3. The local law enforcement agency must ensure that the convicted sex offender upon registering has adequate proof of residence, which is limited to a California driver's license, California identification card, recent rent or utility receipt, printed personalized checks or other recent banking documents showing that person's name and address, or any other information that the registering official believes is reliable. If the offender has no residence and no reasonable expectation of obtaining a residence in the foreseeable future, the local law enforcement agency shall provide the offender with a statement stating that fact.

- **Notice of Reduction of Registration Period**

This activity requires that convicted sex offenders who were required to register before January 1, 1997, shall be notified when the offender next re-registers of the reduction in the registration period was from 14 days to 5 working days. The one-time notice must be in writing from the local law enforcement agency responsible for registering the individual.

- **High-Risk Sex Offenders**

The test claim legislation imposes some new activities on specific local law enforcement agencies related to high-risk offenders. These activities are as follows:

1. Sheriffs' offices must make available to high-risk offenders a pre-printed form from the Department of Justice regarding re-evaluation by the Department of Justice to be removed from the high-risk classification.
2. A local law enforcement agency must maintain statistical information on high-risk offenders and photographs that it receives four times a year from the Department of Justice.

- **CD ROM**

This activity requires that the sheriff's department in each county, municipal police departments of cities with a population of more than

200,000 and other applicable law enforcement agencies provide the necessary equipment for the public to access the sex offender information provided by the Department of Justice on CD-ROM or another electronic medium.

- **Records Retention**

This activity requires a local law enforcement agency to maintain records of those persons requesting to view the CD-ROM or other electronic medium for a minimum of five years and to maintain records of the means and dates of dissemination for a minimum of five years related to the disclosure of high-risk offenders.

Finally, the test claim legislation contains a sunset provision wherein it is only operative until January 1, 2004.

Conclusion

Staff finds that Part 2 of the test claim legislation is a “program” within the meaning of article XIII B, section 6 of the California Constitution, because it carries out the governmental function of providing police protection to the public.

Staff further finds that the following required activities, as outlined in more detail above, are a “new program or higher level of service” under article XIII B, section 6 of the California Constitution and result in “costs mandated by the state” within the meaning of Government Code section 17514:

- Submission of Registered Sex Offender information to the Department of Justice’s Violent Crime Information Network by Local Law Enforcement Agencies (§290, subdivision (a)(1)(F))
- Removal of Registration for Decriminalized Conduct (§290, subdivision (a)(2)(F)(i))
- Pre-register (§290, subdivision (e)(1)(A-C))
- Contents of Registration Upon Release (§290, subdivision (e)(2)(A-E))
- Notice of Reduction of Registration Period (§290, subdivision (l)(1))
- High-Risk Sex Offenders (§290, subdivision (n))
- CD ROM (§290.4, subdivision (4)(A-C))
- Records Retention (§290, subdivision (o))

Lastly, staff finds that all other activities in the test claim legislation do not constitute a reimbursable state mandated program pursuant to article XIII B, section 6 of the California Constitution.

Recommendation

Staff recommends that the Commission approve the staff analysis.

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ORIGINAL

State of California
 COMMISSION ON STATE MANDATES
 414 K Street, Suite 315
 Sacramento, CA 95814
 323-3562
 M 12 911

TEST CLAIM FORM

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COMMISSION ON
STATE MANDATES

Claim No. 97TC-15

Local Agency or School District Submitting Claim

County of Tuolumne

Contact Person

Telephone No.

Sylvia Divita, Employee Relations Technician

(209) 533-5815

Address

County of Tuolumne - Sheriff's Department
 28 N. Lower Sunset Drive
 Sonora, CA 95370

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Penal Code Sections 290 and 290.4, Chapter 908, Statutes of 1996

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

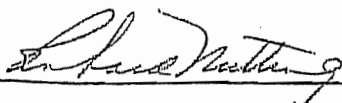
Telephone No.

Richard Nutting, Sheriff

(209) 533-5815

Signature of Authorized Representative

Date



12-29-97

BEFORE THE
COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

TEST CLAIM FILING

Test Claim of: Chapter 908, Statutes of 1996
Penal Code Sections 290 and 290.4

County of Tuolumne Sex Offenders: Disclosure by Law Enforcement
Officers ("Megan's Law")

AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551 (a) to "...hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 Article XIII B of the California Constitution." The County of Tuolumne is a local agency as defined in Government Code Section 17518.

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

Penal Code sections 290 and 290.4 are amended by Chapter 908, Statutes of 1996 authorizing law enforcement officers to disclose information regarding sex offenders that is necessary to protect the public, which may include the identities and location of these offenders, under specified circumstances. The statute requires local law enforcement agencies to disclose and provide, via electronic medium, information regarding sex offenders to the public under specified circumstances.

Law enforcement agencies are defined by the statute to mean any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college, or community college.

This claim contends that Penal Codes Sections 290 and 290.4 as amended by Chapter 908, Statutes of 1996 imposes a reimbursable state-mandated local program by requiring local law enforcement agencies to provide additional information to the public, which may include the identities and locations of these sex offenders, via electronic medium. The statutes also increase the local law enforcement agency's data collection, maintenance and reporting requirements.

B. MANDATED ACTIVITY

Prior to the enactment of Sections 290 and 290.4 of the Penal Code, specified sex offenders were required to comply with certain registration procedures. The amendments imposed by Chapter 908, Statutes of 1996 however add new public disclosure requirements on local law enforcement agencies which did not exist under prior law.

The intent of the legislature in passing this legislation was to protect the safety and general welfare of the people of this state by providing registration of sex offenders pursuant to Sections 290 and 290.4 of the Penal Code and to provide public notice of the presence of certain high-risk sexual offenders who are about to be released or who already reside in the communities in this state.

Section 290 of the Penal Code was amended to require that every sex offender described by Section paragraph (2) of the Penal Code register with the chief of police of the city in which he or she is domiciled or with the sheriff of the county if he or she is domiciled in an unincorporated area within a prescribed amount of time within coming into any city, county or city and county, to update their registration annually 10 days of his or her birthday, and to verify his or her address. This provision is applicable for the entire life of the sex offender or while they reside in the State of California.

The registration consists of: a written statement signed by the person, giving information as may be required by the Department of Justice, fingerprints and photos of the person, a license plate number of any vehicle owned by or registered in the name of the person. Within three days, the registering law enforcement agency must forward this information to the Department of Justice.

When a sex offender moves or changes addresses, they must notify the local law enforcement agency in which they were already registered within 10 days. That agency must then transmit this information to the Department of Justice who will then forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

Section (6) of the Penal Code also requires law enforcement agencies to destroy all records specifically relating to the registration when the person has had their records sealed under the procedures set forth in Section 781 of the Welfare and Institution Code.

Prior law required registration of certain sex offenders, however the reporting and renewal time was 30 days. This statute would shorten the time to 14 days. The local law enforcement agency or agencies with whom the offender is registered must provide a written notice notifying them of the change in the registration period.

The Statute also gives law enforcement officers the authority to provide any of the information specified in paragraph (2) of this subdivision (a) of Section 290.4 if they believe that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of this subdivision (a) of Section 290.4. If a law enforcement agency discloses information it must include, with the disclosure, a statement that the purpose of the release of the information was to allow members of the public to protect themselves and their children from sex offenders.

Paragraph (4) (A) of Section 290.4 of the Penal Code was amended to require law enforcement agencies to make CD-ROM or other electronic medium data provided by the State Department of Justice by available for public viewing on or before July 1, 1997. The CD-ROM or other electronic medium is to be distributed by the Department of Justice on a quarterly basis to each county, municipal police department of cities with a population more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290. Additional copies of the CD-ROM can be obtained at additional cost to the local agency.

Prior to allowing the public to view the information, applicable law enforcement agency must obtain identification and a signed statement from the applicant. The statutes also requires that the signed statement be maintained in a file by the law enforcement agency's office.

C. SPECIFIC STATUTORY SECTIONS THAN CONTAIN THE MANDATE

The provisions of Sections 290 and 290.4 of the Penal Code, impose a reimbursable state mandate on the County of Tuolumne. The primary reimbursable state mandated provisions can be found in the following sections of that chapter:

- Penal Code 290 (a)(1) (registration requirement)
- Penal Code 290 (6) (destruction of records)
- Penal Code 290 (6)(2) (reporting requirements to DOJ)
- Penal Code 290 (k)(1) (noticing requirements) (page 6)
- Penal Code 290 (3) (disclosure of info to public)
- Penal Code 290.4 (4)(A) (public access to data on CD-ROM & file maintenance)

The County also wishes to notify the Commission on State Mandates that, while the above sections contain the most explicit language mandating new reimbursable requirements on local agencies, and specifically upon local agencies such as the County of Tuolumne, all of the other provisions (subsections) of Sections 290 and 290.4 of the

Penal Code are to be included in this test claim as clarifying and/or adding requirements to those two primary sections.

COSTS MANDATED BY THE STATE

Government Code section 17514 defines "costs mandated by the state" as:

Any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

All of the criteria specified in Section 17514 for finding costs mandated by the state have been satisfied. Because this statute was adopted by the legislature as "...an urgency statute, necessary for the immediate preservation of the public peace, health, or safety within the meaning of article IV of the Constitution...", the County of Tuolumne has incurred increased costs after *February 26th 1995* as a result of the additional as well as a higher level of service provided as mandated by Chapter 908, Statutes of 1995.

COST ESTIMATES (SEE ATTACHMENT "A")

CRITERIA FOR NOT FINDING COSTS MANDATED BY THE STATE

Government Code section 17556 specifies conditions for which the Commission shall not find costs mandated by the state, as defined in section 17514.

None of the following conditions contained in Government Code section 17556 apply to this test claim:

- (1) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority.

- (2) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.
- (3) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
- (4) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agency or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
- (5) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.
- (6) The local agency or school district has the authority to level service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
- (7) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

As it relates to the so-called self-funding disclaimer, the local agency's only funding authority is limited to levying a penalty fee for violation of any state statute addressing fire prevention or fire control. The violation of an infraction is limited to a fine of not less than \$100 or more than either \$250 or \$500 depending on the violation. To date, the County of Tuolumne has not received any funding from this source for this program.

The County does not have the authority to charge a service fee or assessment to pay for the mandated costs claimed in this test.

While Chapter 908 does make it an infraction for not complying with the program, the County is not seeking reimbursement of any costs directly related to the enforcement of an infraction.

CLAIM REQUIREMENTS

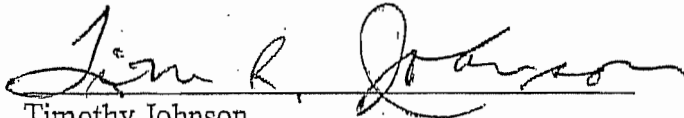
The following elements of these claims are provided pursuant to Section 1183, Title 2, and California Code of Regulations:

- Exhibit 1: The Declaration of Richard Nutting, Sheriff, County of Tuolumne, which describes the mandated activities and estimated costs.
- Exhibit 2: Chapter 908, Statutes of 1995

CLAIM CERTIFICATION

I declare under penalty of perjury that the statements made in this document are true and complete to the best of my personal knowledge and as to all other matters, I believe them to be true and complete based upon the information or belief.

Executed on December 29, 1997, at ^{County of} Tuolumne California by:



Timothy Johnson,
Auditor-Controller

County of Tuolumne
2 South Green Street
Sonora, CA 95370
(209) 533-5551 (Phone)
(209) 533-5627 (FAX)

ATTACHMENT A

COST ESTIMATES

1. Implementation Costs

The following is an estimate of the costs incurred by the County in implementing the program during the 1996 -97 fiscal year and maintaining the program during the 1997-98 fiscal year.

A. Program Implementation

<u>Staff Expense</u>	<u>Materials Cost</u>	<u>Reimbursable Activities</u>
\$1040	\$*TBD	Develop agency Policy Orders/Statements adopting new responsibilities and procedures to all staff
\$1213	\$*TBD	Providing staff training regarding new procedures and technology
\$*TBD	\$*TBD	Purchase & install hardware necessary to operate electronic data provided by the Department of Justice.
\$85	\$15	Develop notices and forms
\$105	\$1450	Purchase & installation of computer with CD-ROM capacity
\$35	\$*TBD	Programming & loading of applicable software
\$*TBD	\$*TBD	Purchase of CD-ROM from DOJ
\$2478	\$1465	Subtotals
	\$3943	Total Estimated 1996-97 costs

*COSTS TO BE DETERMINED

B. On-going Costs

The following is a summary of the estimated costs that will be incurred by the County in operating the program during the 1997-98 fiscal year..

<u>Staff Expense</u>	<u>Materials Cost</u>	<u>Reimbursable Activities</u>
\$525	\$*TBD	Verify current list of sex offenders and addresses
\$98	\$*TBD	Input data into data base DOJ use and transmit to DOJ
\$42	\$*TBD	Make any edits corrections necessary
\$700	\$*TBD	Notify all sex offenders of new reporting requirements
\$700	\$*TBD	Notify other law enforcement agencies when sex offender is moving to their jurisdiction from theirs
\$14	\$*TBD	File and store all records specifically relating to the registration when the person has had their records sealed under the procedures set forth in Section 781 of the Welfare and Institution Code. No records destroyed.
\$1400	\$*TBD	Respond to requests for information & assistance
\$700	\$*TBD	Screen applicants requesting data. Gather necessary identification and documentation.
\$140	\$*TBD	Quarterly update of data from DOJ
\$120	\$*TBD	Evaluate program & modify if needed
\$280	\$*TBD	Annual registrant update
\$105	\$*TBD	New registrant entry
\$4824	\$*TBD	Subtotals
	\$4824	Total Estimated 1997/98 Costs

*COSTS TO BE DETERMINED

DECLARATION OF RICHARD NUTTING

Chapter 908, Statutes of 1995
Claim of the County of Tuolumne

RICHARD NUTTING makes the following declaration and statement under oath:

I am the Sheriff for the County of Tuolumne. In my capacity as Sheriff, I am responsible to plan, direct, manage, coordinate and oversee activities related to law enforcement and the administration thereof.

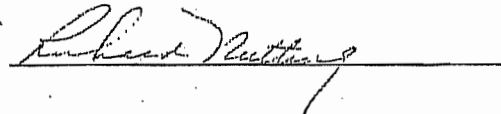
I am familiar with the provisions and requirements of the Government Code and the Penal Code sections included in Chapter 908, Statutes of which required the County to provide additional information to the public, which may include the identities and locations of these sex offenders, via electronic medium and to comply with increased reporting requirements.

I have been the Tuolumne County Sheriff for approximately six (6) years and directed the County's program to comply with the statutes included in the City's Test Claim during part of the current year. I have direct knowledge of Sheriff's Department costs incurred to comply with this state mandate for which the County has not been reimbursed by any federal, state or local government agency, and for which it cannot otherwise obtain reimbursement. The cost information presented in the test claim is a fair and accurate representation of the costs incurred by the County.

The foregoing facts are known to me personally and if so required, I could and would testify to the statements made herein.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 12/29/97 at the County of Tuolumne, California.



BILL NUMBER: AB 1562 CHAPTERED
BILL TEXT

CHAPTER 908
FILED WITH SECRETARY OF STATE SEPTEMBER 25, 1996
APPROVED BY GOVERNOR SEPTEMBER 25, 1996
PASSED THE SENATE AUGUST 31, 1996
PASSED THE ASSEMBLY AUGUST 30, 1996
CONFERENCE REPORT NO. 1
PROPOSED IN CONFERENCE AUGUST 27, 1996
AMENDED IN SENATE JUNE 18, 1996
AMENDED IN SENATE JUNE 3, 1996
AMENDED IN SENATE MARCH 14, 1996
AMENDED IN ASSEMBLY JANUARY 29, 1996
AMENDED IN ASSEMBLY JANUARY 8, 1996

INTRODUCED BY Assembly Member Alby
(Principal coauthor: Assembly Member Boland)
(Coauthors: Assembly Members Ackerman, Aguiar, Baldwin, Battin, Brough, Bordonaro, Bowen, Bowler, Conroy, Cunneen, Escutia, Figueroa, Frussetta, Granlund, Harvey, Hawkins, Hoge, House, Knox, Kuehl, Luykendale, Machado, Margett, McDonald, Miller, Morrissey, Morrow, Napolitano, Olberg, Rainey, Richter, Rogan, Speier, Weggeland, and Woods)
(Coauthors: Senators Ayala, Costa, Haynes, Johnson, Johnston, Leslie, and Leonard)

FEBRUARY 24, 1995

An act to amend Sections 290 and 290.4 of the Penal Code, relating to sex offenders, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1562, Alby. Sex offenders: disclosure by law enforcement officers.

(1) Existing law imposes registration requirements on specified sex offenders.

This bill would authorize law enforcement officers to disclose information regarding these offenders that is necessary to protect the public, which may include the identities and locations of these offenders, under specified circumstances.

(2) Existing law requires the Department of Justice to continually compile specified information regarding persons required to register as sex offenders.

Among other things, this bill would require the department, on or before July 1, 1997, to provide a CD-ROM or other electronic medium containing this information to specified law enforcement agencies. These law enforcement agencies would be required to make the CD-ROM or other electronic medium available for public viewing. Unauthorized removal or destruction of the CD-ROM or other electronic medium would be a misdemeanor. By increasing the duties of local officials and creating a new crime, this bill would impose a state-mandated local program.

(3) Existing law requires the Department of Justice to operate a "900" telephone number that members of the public may call to inquire whether a named individual is included among those described by the provision.

This bill would revise these provisions and would require the Department of Justice to report to the Legislature, on or before July 1, 2000, concerning the effects of these changes to the "900"

telephone number system made by this bill.

(4) This bill would also incorporate additional changes to Section 90 of the Penal Code proposed by AB 401, to be operative if AB 401 and this bill are both enacted on or before January 1, 1997, and this bill is enacted last.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

(6) The bill would declare that it is to take effect immediately as an urgency statute.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1.~~ The Legislature finds and declares the following:

(a) Sex offenders pose a high risk of engaging in further offenses after release from incarceration or commitment, and protection of the public from these offenders is a paramount public interest.

(b) It is a compelling and necessary public interest that the public have information concerning persons convicted of offenses involving unlawful sexual behavior collected pursuant to Sections 290 and 290.4 of the Penal Code to allow members of the public to adequately protect themselves and their children from these persons.

(c) Persons convicted of these offenses involving unlawful sexual behavior have a reduced expectation of privacy because of the public interest in public safety.

(d) In balancing the offenders' due process and other rights against the interests of public security, the Legislature finds that releasing information about sex offenders under the circumstances specified in this act will further the primary government interest of protecting vulnerable populations from potential harm.

(e) The registration of sex offenders, the public release of specified information about certain sex offenders pursuant to Sections 290 and 290.4 of the Penal Code, and public notice of the presence of certain high-risk sexual offenders in communities will further the governmental interests of public safety and public scrutiny of the criminal and mental health systems that deal with these offenders.

(f) To protect the safety and general welfare of the people of this state, it is necessary to provide for continued registration of sex offenders, for the public release of specified information regarding certain more serious sex offenders, and for community notification regarding high-risk sex offenders who are about to be released from custody or who already reside in communities in this state. This policy of authorizing the release of necessary and relevant information about serious and high-risk sex offenders to members of the general public is a means of assuring public protection and shall not be construed as punitive.

(g) The Legislature also declares, however, that in making information available about certain sex offenders to the public, it does not intend that the information be used to inflict retribution or additional punishment on any such person convicted of a sexual offense. While the Legislature is aware of the possibility of

misuse, it finds that the dangers to the public of nondisclosure far outweigh the risk of possible misuse of the information. The Legislature is further aware of studies in Oregon and Washington indicating that community notification laws and public release of criminal information in those states have resulted in little criminal misuse of the information and that the enhancement to public safety has been significant.

SECTION 2. Section 290 of the Penal Code is amended to read:

290. (a) (1) Every person described in paragraph (2), for the rest of his or her life while residing in California, shall be required to register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities, within 14 days of coming into any city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. The person shall be required annually thereafter, within 10 days of his or her birthday, to update his or her registration with the entities described in this paragraph, including, verifying his or her address on a form as may be required by the Department of Justice.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military court of a violation of subdivision (b) of Section 207, kidnapping, as punishable pursuant to subdivision (d) of Section 208, Section 220, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261 or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, 266j, 267, 285, 286, 288, 288a, 288.5, or 286 subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (d) of Section 647, subdivision 1 or 2 of Section 314, any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any federal or military court, of any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in subparagraph (A).

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) Any person who, after August 1, 1950, is released, discharged, or paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he

she was committed as a mentally disordered sex offender under article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offenses described in paragraph (3) shall be subject to registration under the procedures of this section.

(2) Any person who, on or after January 1, 1995, is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraphs (3) and (4), shall be subject to registration under the procedures of this section.

(3) The following offenses shall apply for the purpose of this subdivision:

- (A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.
- (B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, subdivision (a) of Section 289, subdivision (b) of Section 207, or

kidnapping, as punishable pursuant to subdivision (d) of Section 208.

(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(4) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(5) Prior to discharge or parole from the Department of the Youth Authority, any person who is subject to registration shall be informed of the duty to register under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(6) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person who is required to register or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 781 of the Welfare and Institutions Code.

(e) (1) The registration shall consist of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by or registered in the name of the person.

(2) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) If any person who is required to register pursuant to this section changes his or her residence address, the person shall inform, in writing within 10 days, the law enforcement agency or agencies with whom he or she last registered of the new address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice.

The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Notwithstanding paragraph (1), any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1 or 289 under Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208, and who is required to register under this section who willfully violates this section is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(3) Any person required to register under this section based on a

felony conviction who willfully violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a felony and shall be punished by imprisonment in the state prison for 16 months or two or three years.

A person punished pursuant to this paragraph or paragraph (2) shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year. If the person has been sentenced to a term of imprisonment in the state prison, the penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be served. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in subdivisions (m) and (n) and Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined in any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(l) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a

law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (2) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

(E) The offender's physical description.

(F) The offender's photograph.

(G) The offender's date of birth.

(H) Crimes resulting in registration under this section.

(I) The offender's address, which must be verified prior to publication.

(J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.

(K) Type of victim targeted by the offender.

(L) Relevant parole or probation conditions, such as one prohibiting contact with children.

(M) Dates of crimes resulting in classification under this section.

(N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(3) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(4) For purposes of this section, "likely to encounter" means (A) that the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to, visit on a regular basis, and (B) the types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(5) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(6) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(7) Law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a law enforcement agency may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of a sex offense for which registration is required under paragraph (2) of this subdivision (a) and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(B) A violent sex offense means any offense defined in Section 20, except attempt to commit mayhem, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 27, subdivision (a) of Section 192, 203, 206, 207, 236, provided that the offense is a felony, subdivision (a) of Section 273a, 273d, 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 13.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, 314, 459, provided the offense is of the first degree, 597, 646.9, subdivision (d), (h), or (i) of Section 647, 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest of a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, mad camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Law enforcement agency" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice;

Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college; or community college.

(2) The Department of Justice shall continually search the records added to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other law enforcement agency upon request, the following information regarding each identified high-risk sexual offender: full

name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any law enforcement agency to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(c) Agencies disseminating information to the public pursuant to subdivision (a) shall maintain records of the offender and the means and dates of dissemination for a minimum of five years.

(p) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

SEC. 2.5. Section 290 of the Penal Code is amended to read:

290. (a) (1) Every person described in paragraph (2), for the rest of his or her life while residing in California, shall be required to register with the chief of police of the city in which he or she is domiciled, or the sheriff of the county if he or she is domiciled in an unincorporated area, and, additionally, with the chief of police of a campus of the University of California or the California State University if he or she is domiciled upon the campus or in any of its facilities, within five working days of coming into any city, county, or city and county in which he or she temporarily resides or is domiciled for that length of time. The person shall be required annually thereafter, within five working days of his or her birthday, to update his or her registration with the entities described in this paragraph, including, verifying his or her name and address on a form as may be required by the Department of Justice.

(2) The following persons shall be required to register pursuant to paragraph (1):

(A) Any person who, since July 1, 1944, has been or is hereafter convicted in any court in this state or in any federal or military

court of a violation of subdivision (b) of Section 207, kidnapping, punishable pursuant to subdivision (d) of Section 208, Section 209, except assault to commit mayhem, Section 243.4, paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261 or paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to the state prison, Section 264.1, 266, 266c, 266j, 267, 285, 286, 288, 288a, 288.5, or 289, subdivision (b), (c), or (d) of Section 311.2, Section 311.3, 311.4, 311.10, 311.11, or 647.6, former Section 647a, subdivision (d) of Section 647, subdivision 1 or 2 of Section 314, any offense involving lewd and lascivious conduct under Section 272, or any felony violation of Section 288.2; or any person who since that date has been or is hereafter convicted of the attempt to commit any of the above-mentioned offenses.

(B) Any person who, since July 1, 1944, has been or hereafter is released, discharged, or paroled from a penal institution where he or she was confined because of the commission or attempted commission of one of the offenses described in subparagraph (A).

(C) Any person who, since July 1, 1944, has been or hereafter is determined to be a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(D) Any person who, since July 1, 1944, has been, or is hereafter convicted in any other court, including any federal or military court, of any offense which, if committed or attempted in this state, could have been punishable as one or more of the offenses described in subparagraph (A).

(E) Any person ordered by any court to register pursuant to this section for any offense not included specifically in this section if the court finds at the time of conviction that the person committed the offense as a result of sexual compulsion or for purposes of sexual gratification. The court shall state on the record the reasons for its findings and the reasons for requiring registration.

(b) Any person who, after August 1, 1950, is released, discharged, paroled from a jail, state or federal prison, school, road camp, or other institution where he or she was confined because of the commission or attempted commission of one of the offenses specified in subdivision (a) or is released from a state hospital to which he or she was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, shall, prior to discharge, parole, or release, be informed of his or her duty to register under this section by the official in charge of the place of confinement or hospital, and the official shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to the person. The official in charge of the place of confinement or hospital shall obtain the address where the person expects to reside upon his or her discharge, parole, or release and shall report the address to the Department of Justice. The official in charge of the place of confinement or hospital shall give one copy of the form to the person and shall send one copy to the Department of Justice and one copy to the appropriate law enforcement agency or agencies having jurisdiction over the place the person expects to reside upon discharge, parole, or release. If the conviction that makes the person subject to this section is a felony conviction, the official in charge shall, not later than 45 days prior to the scheduled release of the person, send one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon discharge, parole, or release; one copy to the prosecuting agency that prosecuted the person; and one copy to the Department of Justice. The official in charge of the place of confinement shall retain one copy.

(c) Any person who, after August 1, 1950, is convicted in this state of the commission or attempted commission of any of the offenses specified in subdivision (a) and who is released on probation or discharged upon payment of a fine shall, prior to release or discharge, be informed of the duty to register under this section by the court in which the person has been convicted, and the court shall require the person to read and sign any form that may be required by the Department of Justice, stating that the duty of the person to register under this section has been explained to him or her. The court shall obtain the address where the person expects to reside upon release or discharge and shall report within three days the address to the Department of Justice. The court shall give one copy of the form to the person, send one copy to the Department of Justice, and forward one copy to the appropriate law enforcement agency or agencies having local jurisdiction where the person expects to reside upon his or her discharge, parole, or release.

(d) (1) Any person who, on or after January 1, 1986, is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration under the procedures of this section. Any person who, on or after January 1, 1997, has been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of any offense described in paragraph (3) shall be subject to registration, upon completion of formal probation and subject to paragraphs (8), (9), and (10), under the procedures of this section regardless of the disposition of the case. Notice of this requirement shall be given to the person at the offender disposition hearing.

(2) Any person who, on or after January 1, 1995, is discharged or paroled from a facility in another state that is equivalent to the Department of the Youth Authority, to the custody of which he or she was committed because of an offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraphs (3) and (4), shall be subject to registration under the procedures of this section.

Any juvenile who, on or after January 1, 1996, is found guilty of an offense in another state, which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in paragraph (3), shall be subject to registration under the procedures of this section regardless of the disposition of the case, subject to paragraphs (8), (9), and (10).

(3) The following offenses shall apply for the purpose of this subdivision:

(A) Assault with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 under Section 220.

(B) Any offense defined in Section 288 or 288.5, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 286, paragraph (1) of subdivision (b) of, or subdivision (c) or (d) of, Section 288a, paragraph (2) of subdivision (a) of Section 261, subdivision (a) of Section 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208.

(C) Any offense under Section 264.1 involving rape in concert with force or fear of bodily injury or penetration by any foreign object in concert with force or fear of bodily injury.

(4) Any person who is discharged or paroled from the Department of the Youth Authority to the custody of which he or she was committed after having been adjudicated a ward of the court pursuant to Section 602 of the Welfare and Institutions Code because of the commission or attempted commission of the offense set forth in Section 647.6, occurring on or after January 1, 1988, shall be subject to registration under the procedures of this section.

(5) Prior to discharge or parole from the Department of the Youth Authority, or at the offender disposition hearing, as provided in this subdivision, any person who is subject to registration shall be informed of the duty to register, and the possible exemption from registration, if applicable, under the procedures set forth in this section. Department of the Youth Authority officials shall transmit the required forms and information to the Department of Justice.

(6) All records specifically relating to the registration in the custody of the Department of Justice, law enforcement agencies, and other agencies or public officials shall be destroyed when the person is required to register or has his or her records sealed under the procedures set forth in Section 781 of the Welfare and Institutions Code. This subdivision shall not be construed as requiring the destruction of other criminal offender or juvenile records relating to the case which are maintained by the Department of Justice, law enforcement agencies, the juvenile court, or other agencies and public officials unless ordered by a court under Section 1 of the Welfare and Institutions Code.

(7) A person required to register pursuant to this subdivision, who has not been committed by the juvenile court to the custody of the Department of the Youth Authority, shall be required to register only until he or she attains the age of 25 years.

(8) Subject to the conditions set forth in paragraph (9), the juvenile court may exempt from the registration requirements of this subdivision a person who has not been committed to the custody of the Department of the Youth Authority if the court, after considering the recommendations of the district attorney, the probation department, the person seeking the exemption, any treatment program or clinical provider that has treated or assessed the person seeking the exemption, and any other person deemed by the court to have information relevant to its decision, finds all of the following:

(A) The person poses no substantial risk of repeating the sex offense for which he or she was adjudicated a ward of the court, or committing any sex offense, as evidenced by any of the following:

(i) The successful completion of a sex offender treatment program.

(ii) Corroboration of the person's rehabilitation as a sex offender by means of a clinical, psychiatric, or psychological evaluation.

(iii) Any other relevant evidence.

(B) The exemption would facilitate the eligibility or competitiveness of the person seeking the exemption to be considered for employment, educational, or vocational opportunities for which the person otherwise would qualify and that the person otherwise could pursue, including, but not limited to, the United States Military or the Job Corps.

(C) The person has not been adjudged to have committed, nor been convicted of committing, any sexual or violent offense subsequent to being adjudged a ward of the court for committing any offense for which the person is subject to the registration requirements of this subdivision.

(9) Any exemption granted pursuant to paragraph (8) shall be conditioned upon the exempted person's acceptance into and continuing participation in an employment, educational, or vocational opportunity pursuant to subparagraph (B) of paragraph (8), and may be revoked by the juvenile court, upon notice and a hearing, if the person is not accepted into, is terminated from, or otherwise is not participating in, the opportunity, or if the person is adjudged to have committed or been convicted of a sex offense subsequent to having been exempted from registration pursuant to this subdivision.

(10) Any person granted an exemption pursuant to this subdivision shall notify the juvenile court within 10 days if the person is not accepted into, is terminated from, or otherwise is not participating

in, the employment, educational, or vocational program upon which an exemption to the registration requirements of this subdivision was based. Any person whose exemption has been revoked for reasons beyond their control, and not as a result of misconduct, may reapply for an extension based on the conditions set forth in this subdivision.

(e) (1) The registration shall consist of the following:

(A) A statement in writing signed by the person, giving information as may be required by the Department of Justice.

(B) The fingerprints and photograph of the person.

(C) The license plate number of any vehicle owned by or registered in the name of the person.

(2) Within three days thereafter, the registering law enforcement agency or agencies shall forward the statement, fingerprints, photograph, and vehicle license plate number, if any, to the Department of Justice.

(f) If any person who is required to register pursuant to this section changes his or her name or residence address, the person shall inform, in writing within five working days, the law enforcement agency or agencies with whom he or she last registered of the new name or address. The law enforcement agency or agencies shall, within three days after receipt of this information, forward it to the Department of Justice. The Department of Justice shall forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

(g) (1) Any person who is required to register under this section based on a misdemeanor conviction who willfully violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding one year.

(2) Notwithstanding paragraph (1), any person who has been convicted of assault with intent to commit rape, oral copulation, or sodomy under Section 220, any violation of Section 264.1 or 289 under Section 220, any violation of Section 261, any offense defined in paragraph (1) of subdivision (a) of Section 262 involving the use of force or violence for which the person is sentenced to state prison, any violation of Section 264.1, 286, 288, 288a, 288.5, or 289, subdivision (b) of Section 207, or kidnapping, as punishable pursuant to subdivision (d) of Section 208, and who is required to register under this section who willfully violates this section is guilty of a felony punishable by imprisonment in the state prison for 16 months, or two or three years.

(3) Any person required to register under this section based on a felony conviction who willfully violates this section or who has a prior conviction for the offense of failing to register under this section and who subsequently and willfully commits that offense is, upon each subsequent conviction, guilty of a felony and shall be punished by imprisonment in the state prison for 16 months or two or three years.

A person punished pursuant to this paragraph or paragraph (2) shall be sentenced to serve a term of not less than 90 days nor more than one year in a county jail. In no event does the court have the power to absolve a person who willfully violates this section from the obligation of spending at least 90 days of confinement in a county jail and of completing probation of at least one year.

If the person has been sentenced to a term of imprisonment in the state prison, the penalty described in this paragraph shall apply whether or not the person has been released on parole or has been discharged from parole.

(4) If, after discharge from parole, the person is convicted of a felony as specified in this subdivision, he or she shall be required to complete parole of at least one year, in addition to any other punishment imposed under this subdivision. A person convicted of a felony as specified in this subdivision may be granted probation only in the unusual case where the interests of justice would best be

erved. When probation is granted under this paragraph, the court shall specify on the record and shall enter into the minutes the circumstances indicating that the interests of justice would best be served by the disposition.

(h) Whenever any person is released on parole or probation and is required to register under this section but fails to do so within the time prescribed, the parole authority, the Youthful Offender Parole Board, or the court, as the case may be, shall order the parole or probation of the person revoked. For purposes of this subdivision, "parole authority" has the same meaning as described in Section 3000.

(i) Except as provided in Section 290.4, the statements, photographs, and fingerprints required by this section shall not be open to inspection by the public or by any person other than a regularly employed peace officer or other law enforcement officer.

(j) In any case in which a person who would be required to register pursuant to this section for a felony conviction is to be temporarily sent outside the institution where he or she is confined on any assignment within a city or county including firefighting, disaster control, or of whatever nature the assignment may be, the local law enforcement agency having jurisdiction over the place or places where the assignment shall occur shall be notified within a reasonable time prior to removal from the institution. This provision shall not apply to any person who is temporarily released under guard from the institution where he or she is confined.

(k) As used in this section, "mentally disordered sex offender" includes any person who has been determined to be a sexual psychopath or a mentally disordered sex offender under any provision which, on or before January 1, 1976, was contained in Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

(1) (1) Every person who, prior to January 1, 1985, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 30 to 14 days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 30 days.

(2) Every person who, prior to January 1, 1997, is required to register under this section, shall be notified whenever he or she next reregisters of the reduction of the registration period from 14 to five working days. This notice shall be provided in writing by the registering agency or agencies. Failure to receive this notification shall be a defense against the penalties prescribed by subdivision (g) if the person did register within 14 days.

(m) (1) When a peace officer reasonably suspects, based on information that has come to his or her attention through information provided by any peace officer or member of the public, that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of subdivision (a) of Section 290.4, a law enforcement agency may, notwithstanding any other provision of law, provide any of the information specified in paragraph (2) of this subdivision about that registered sex offender that the agency deems relevant and necessary to protect the public, to the following persons, agencies, or organizations the offender is likely to encounter, including, but not limited to, the following:

(A) Public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender.

(B) Other community members at risk.

(2) The information that may be disclosed pursuant to this section includes the following:

(A) The offender's full name.

(B) The offender's known aliases.

(C) The offender's gender.

(D) The offender's race.

- (E) The offender's physical description.
- (F) The offender's photograph.
- (G) The offender's date of birth.
- (4) Crimes resulting in registration under this section.
- (i) The offender's address, which must be verified prior to publication.
- (J) Description and license plate number of offender's vehicles or vehicles the offender is known to drive.
- (K) Type of victim targeted by the offender.
- (L) Relevant parole or probation conditions, such as one prohibiting contact with children.
- (M) Dates of crimes resulting in classification under this section.
- (N) Date of release from confinement.

However, information disclosed pursuant to this subdivision shall not include information that would identify the victim.

(3) If a law enforcement agency discloses information pursuant to this subdivision, it shall include, with the disclosure, a statement that the purpose of the release of the information is to allow members of the public to protect themselves and their children from sex offenders.

(4) For purposes of this section, "likely to encounter" means (A) that the agencies, organizations, or other community members are in a location or in close proximity to a location where the offender lives or is employed, or that the offender visits or is likely to visit on a regular basis, and (B) the types of interaction that ordinarily occur at that location and other circumstances indicate that contact with the offender is reasonably probable.

(5) For purposes of this section, "reasonably suspects" means that it is objectively reasonable for a peace officer to entertain a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate on his or her training and experience, to suspect that a child or other person is at risk.

(6) For purposes of this section, "at risk" means a person is or may be exposed to a risk of becoming a victim of a sex offense committed by the offender.

(7) Law enforcement agency may continue to disclose information on an offender under this subdivision for as long as the offender is included in Section 290.4.

(n) In addition to the procedures set forth elsewhere in this section, a law enforcement agency may advise the public of the presence of high-risk sex offenders in its community pursuant to this subdivision.

(1) For purposes of this subdivision:

(A) A high-risk sex offender is a person who has been convicted of an offense for which registration is required under paragraph (2) of subdivision (a) and also meets one of the following criteria:

(i) Has been convicted of three or more violent sex offenses, at least two of which were brought and tried separately.

(ii) Has been convicted of two violent sex offenses and one or more violent nonsex offenses, at least two of which were brought and tried separately.

(iii) Has been convicted of one violent sex offense and two or more violent nonsex offenses, at least two of which were brought and tried separately.

(iv) Has been convicted of either two violent sex offenses or one violent sex offense and one violent nonsex offense, at least two of which were brought and tried separately, and has been arrested on separate occasions for three or more violent sex offenses, violent nonsex offenses, or associated offenses.

(B) A violent sex offense means any offense defined in Section 220, except attempt to commit murder, 261, 264.1, 286, 288, 288a, 288.5, 289, or 647.6, or infliction of great bodily injury during the commission of a sex offense, as provided in Section 12022.8.

(C) A violent nonsex offense means any offense defined in Section 17, subdivision (a) of Section 192, 203, 206, 207, 236, provided that the offense is a felony, subdivision (a) of Section 273a, 273d, 451, or attempted murder, as defined in Sections 187 and 664.

(D) An associated offense means any offense defined in Section 3.4, provided that the offense is a felony, Section 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, 314, 459, provided the offense is of the first degree, 597, 646.9, subdivision (d), (h), or (i) of Section 647, 653m, or infliction of great bodily injury during the commission of a felony, as defined in Section 12022.7.

(E) For purposes of subparagraphs (B) to (D), inclusive, an arrest or conviction for the statutory predecessor of any of the enumerated offenses, or an arrest or conviction in any other jurisdiction for any offense which, if committed or attempted in this state, would have been punishable as one or more of the offenses described in those subparagraphs, is to be considered in determining whether an offender is a high-risk sex offender.

(F) For purposes of subparagraphs (B) to (D), inclusive, an arrest of a juvenile or an adjudication as a ward of the juvenile court within the meaning of Section 602 of the Welfare and Institutions Code for any of the offenses described in those subparagraphs is to be considered in determining whether an offender is a high-risk sex offender.

(G) Notwithstanding subparagraphs (A) to (D), inclusive, an offender shall not be considered to be a high-risk sex offender if either of the following apply:

(i) The offender's most recent conviction or arrest for an offense described in subparagraphs (B) to (D), inclusive, occurred more than five years prior to the high-risk assessment by the Department of Justice, excluding periods of confinement.

(ii) The offender notifies the Department of Justice, on a form approved by the department and available at any sheriff's office, that he or she has not been convicted in the preceding 15 years, excluding periods of confinement, of an offense for which registration is required under paragraph (2) of subdivision (a), and the department is able, upon exercise of reasonable diligence, to verify the information provided in paragraph (2).

(H) "Confinement" means confinement in a jail, prison, school, road camp, or other penal institution, confinement in a state hospital to which the offender was committed as a mentally disordered sex offender under Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, or confinement in a facility designated by the Director of Mental Health to which the offender was committed as a sexually violent predator under Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code.

(I) "Law enforcement agency" means any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college, or community college.

(2) The Department of Justice shall continually search the records provided to it pursuant to subdivision (b) and identify, on the basis of those records, high-risk sex offenders. Four times each year, the department shall provide to each chief of police and sheriff in the state, and to any other law enforcement agency upon request, the following information regarding each identified high-risk sexual offender: full name; known aliases; gender; race; physical description; photograph; date of birth; and crimes resulting in classification under this section.

(3) The Department of Justice and any law enforcement agency to which notice has been given pursuant to paragraph (2) may cause to be made public, by whatever means the agency deems necessary to ensure

the public safety, based upon information available to the agency concerning a specific person, including, but not limited to, the information described in paragraph (2); the offender's address, which shall be verified prior to publication; description and license plate number of the vehicles or vehicles the offender is known to drive; type of victim targeted by the offender; relevant parole or probation conditions, such as one prohibiting contact with children; dates of crimes resulting in classification under this section; and date of release from confinement; but excluding information that would identify the victim.

(o) Agencies disseminating information to the public pursuant to subdivision (a) shall maintain records of the offender and the means and dates of dissemination for a minimum of five years.

(p) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section.

(q) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to any other punishment, by a five-year term of imprisonment in the state prison. Any person who uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(r) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

SEC. 3. Section 290.4 of the Penal Code is amended to read:

290.4. (a) (1) The Department of Justice shall continually collect the information as described in paragraph (2) regarding any person required to register under Section 290 for a conviction of subdivision (b) of Section 207; kidnapping, as punishable pursuant to subdivision (d) of Section 208; Section 220, except assault to commit mayhem; Section 243.4, provided that the offense is a felony; paragraph (1), (2), (3), (4), or (6) of subdivision (a) of Section 261; Section 264.1; Section 266, provided that the offense is a felony; Section 266c, provided that the offense is a felony; Section 267; paragraph (2) of subdivision (b), subdivision (c), (d), (f), (g), (i), (j), or (k) of Section 286; Section 288; paragraph (2) of subdivision (b), (c), (d), (f), (g), (i), (j), or (k) of Section 288a; Section 288.5; subdivision (a), (b), (d), (e), (f), (g), (h), provided that the offense is a felony, (i), or (j) of Section 289; Section 647.6; or the statutory predecessor of any of these offenses. This requirement shall not be applied to a person whose duty to register has been terminated pursuant to paragraphs (6) and (7) of subdivision (d) of Section 290, or to a person who has been relieved of his or her duty to register under Section 290.5.

(2) The information shall be categorized by community of residence and ZIP Code. The information shall include the names and known aliases of these persons, photograph, a physical description, gender, race, date of birth, the criminal history, and the address, including ZIP Code, in which the person resides, and any other information that the Department of Justice deems relevant, not including information that would identify the victim.

(3) The department shall operate a "900" telephone number that members of the public may call and inquire whether a named individual is listed among those described in this subdivision. The caller shall furnish his or her first name, middle initial, and last name. The department shall ascertain whether a named person reasonably appears to be a person so listed and provide the caller with the information described in paragraph (2), except the department shall not disclose the street address or criminal history of a person

listed, except to disclose the ZIP Code area in which the person resides and to describe the specific crimes for which the registrant is required to register. The department shall decide whether the named person reasonably appears to be a person listed, based upon information from the caller providing information that shall include (A) an exact street address, including apartment number, social security number, California driver's license or identification number, or birth date along with additional information that may include any of the following: name, hair color, eye color, height, weight, distinctive markings, ethnicity; or (B) any combination of at least six of the above listed characteristics if an exact birth date and address is not available. If three of the characteristics provided include ethnicity, hair color, and eye color, a seventh identifying characteristic shall be provided. Any information identifying the victim by name, birth date, address, or relation to the registrant shall be excluded by the department.

(4) (A) On or before July 1, 1997, the department shall provide a CD-ROM or other electronic medium containing the information described in paragraph (2), except the person's street address and criminal history other than the specific crimes for which the person is required to register, for all persons described in paragraph (1) of subdivision (a), and shall distribute the CD-ROM or other electronic medium on a quarterly basis to the sheriff's department in each county, municipal police departments of cities with a population of more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290. These law enforcement agencies may obtain additional copies by purchasing a yearly subscription to the CD-ROM or other electronic medium from the Department of Justice for a yearly subscription fee. The Department of Justice, the sheriff's departments, and the municipal police departments of cities with a population of more than 200,000 shall make, and the other law enforcement agencies may make the CD-ROM or other electronic medium available for viewing by the public in accordance with the following. The agency may require that a person applying to view the CD-ROM or other electronic medium express an articulable purpose in order to have access thereto. The applicant shall provide identification in the form of a California driver's license or California identification card, showing the applicant to be at least 18 years of age, shall sign a register, which the law enforcement agency is required to maintain, of persons applying to view the CD-ROM or other electronic medium, and shall sign a statement, on a form provided by the Department of Justice, stating that the applicant is not a registered sex offender, that he or she understands the purpose of the release of information is to allow members of the public to protect themselves and their children from sex offenders, and he or she understands it is unlawful to use information obtained from the CD-ROM or other electronic medium to commit a crime against any registrant or to engage in illegal discrimination or harassment of any registrant. The signed statement shall be maintained in a file in the law enforcement agency's office.

(B) The records of persons requesting to view the CD-ROM or other electronic medium are confidential, except that a copy of the applications requesting to view the CD-ROM or other electronic medium may be disclosed to law enforcement agencies for law enforcement purposes.

(C) Any information identifying the victim by name, birth date, address, or relationship to the registrant shall be excluded from the CD-ROM or other electronic medium.

(5) (A) The income from the operation of the "900" number shall be deposited in the Sexual Predator Public Information Account, which is hereby established within the Department of Justice for the purpose of the implementation of this section by the Department of Justice, including all actual and reasonable costs related to establishing and maintaining the information described in subdivision

(a) and the CD-ROM or other electronic medium described in this subdivision.

(B) The moneys in the Sexual Predator Public Information Account shall consist of income from the operation of the "900" telephone number program authorized by this section, proceeds of the loan made pursuant to Section 6 of the act adding this section, and any other funds made available to the account by the Legislature. Moneys in the account shall be available to the Department of Justice upon appropriation by the Legislature for the purpose specified in subparagraph (A).

(C) When the "900" number is called, a preamble shall be played before charges begin to accrue. The preamble shall run at least the length of time required by federal law and shall provide the following information:

(i) Notice that the caller's telephone number will be recorded.

(ii) The charges for use of the "900" number.

(iii) Notice that the caller is required to identify himself or herself to the operator.

(iv) Notice that the caller is required to be 18 years of age or older.

(v) A warning that it is illegal to use information obtained through the "900" number to commit a crime against any registrant or to engage in illegal discrimination or harassment against any registrant.

(vi) Notice that the caller is required to have the birth date, California driver's license or identification number, social security number, or address or other identifying information regarding the person about whom information is sought in order to achieve a positive identification of that person.

(vii) A statement that the number is not a crime hotline and that any suspected criminal activity should be reported to local authorities.

(iii) A statement that the caller should have a reasonable suspicion that a person is at risk.

(D) The Department of Justice shall expend no more than six hundred thousand dollars (\$600,000) per year from any moneys appropriated by the Legislature from the account.

(b) (1) Any person who uses information disclosed pursuant to this section to commit a felony shall be punished, in addition and consecutive to, any other punishment, by a five-year term of imprisonment in the state prison.

(2) Any person who, without authorization, uses information disclosed pursuant to this section to commit a misdemeanor shall be subject to, in addition to any other penalty or fine imposed, a fine of not less than five hundred dollars (\$500) and not more than one thousand dollars (\$1,000).

(c) The record of the compilation of offender information on each CD-ROM or other electronic medium distributed pursuant to this section shall be used only for law enforcement purposes and the public safety purposes specified in this section and Section 290. This record shall not be distributed or removed from the custody of the law enforcement agency that is authorized to retain it. Information obtained from this record shall be disclosed to a member of the public only as provided in this section or Section 290, or any other statute expressly authorizing it.

Any person who copies, distributes, discloses, or receives this record or information from it, except as authorized by law, is guilty of a misdemeanor, punishable by imprisonment in the county jail not to exceed six months or by a fine not exceeding one thousand dollars (\$1,000), or by both. This subdivision shall not apply to a law enforcement officer who makes a copy as part of his or her official duties in the course of a criminal investigation, court case, or as otherwise authorized by subdivision (n) of Section 290.

Notwithstanding Section 6254.5 of the Government Code, disclosure of information pursuant to this section is not a waiver of exemptions

der Chapter 3.5 (commencing with Section 6250) of Title 1 of Division 7 of the Government Code and does not affect other statutory restrictions on disclosure in other situations.

(d) Unauthorized removal or destruction of the CD-ROM or other electronic medium from the offices of any law enforcement agency is a misdemeanor, punishable by imprisonment in a county jail not to exceed one year or by a fine not exceeding one thousand dollars (\$1,000), or both.

(e) (1) A person is authorized to use information disclosed pursuant to this section only to protect a person at risk.

This section shall not affect authorized access to, or use of, information pursuant to, among other provisions, Sections 11105 and 105.3 of this code, Section 226.55 of the Civil Code, Sections 7.5 and 14409.2 of the Financial Code, Sections 1522.01 and 96.871 of the Health and Safety Code, and Section 432.7 of the Labor Code.

(2) Except as authorized under paragraph (1) or any other provision of law, use of any of the following information disclosed pursuant to this section is prohibited:

- (A) Health insurance.
- (B) Insurance.
- (C) Loans.
- (D) Credit.
- (E) Employment.
- (F) Education, scholarships, or fellowships.
- (G) Housing or accommodations.
- (H) Benefits, privileges, or services provided by any business establishment.

(3) (A) Any use of information disclosed pursuant to this section for purposes other than those provided by paragraph (1) of subdivision (e) or in violation of paragraph (2) of subdivision (e) shall make the user liable for the actual damages, and any amount that may be determined by a jury or a court sitting without a jury, not exceeding three times the amount of actual damage, and not less than two hundred fifty dollars (\$250), and attorney's fees, exemplary damages, or a civil penalty not exceeding twenty-five thousand dollars (\$25,000).

(B) Whenever there is reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of misuse of the "900" number in violation of paragraph (2) of subdivision (e), the Attorney General, any district attorney, or city attorney, or any person aggrieved by the misuse of that number is authorized to bring a civil action in the appropriate court requesting preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or group of persons responsible for the pattern or practice of misuse. The foregoing remedies shall be independent of any other remedies or procedures that may be available to an aggrieved party under other provisions of law, including Part 2 (commencing with Section 43) of Division 1 of the Civil Code.

(f) This section shall not be deemed to authorize the publication, distribution, or disclosure of the address of any person about whom information can be published, distributed, or disclosed pursuant to this section.

(g) Community notification shall be governed by subdivisions (m) and (n) of Section 290.

(h) The Department of Justice shall submit to the Legislature an annual report on the operation of the "900" telephone number required by paragraph (3) of subdivision (a) on July 1, 1996, July 1, 1997, and July 1, 1998. The annual report shall include all of the following:

- (1) Number of calls received.
- (2) Amount of income earned per year through operation of the "900" telephone number.
- (3) A detailed outline of the amount of money expended and the

manner in which it was expended for purposes of this section.

(4) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(5) Number of persons listed pursuant to subdivision (a).

(6) A summary of the success of the "900" telephone number program based upon selected factors.

(i) The "900" telephone number program authorized by this section shall terminate operation on January 1, 1998.

(j) Law enforcement agencies, employees of law enforcement agencies, and state officials shall be immune from liability for good faith conduct under this section.

(k) On or before July 1, 2000, the Department of Justice shall make a report to the Legislature concerning the changes to the operation of the "900" telephone number program made by the amendments to this section by Assembly Bill 1562 of the 1995-96 Regular Session of the Legislature. The report shall include all of the following:

(1) Number of calls received by county.

(2) Number of calls that resulted in an affirmative response and the number of calls that resulted in a negative response with regard to whether a named individual was listed pursuant to subdivision (a).

(3) Number of persons listed pursuant to subdivision (a).

(4) Statistical information concerning prosecutions of persons for misuse of the "900" telephone number program, including the outcomes of those prosecutions.

(5) A summary of the success of the "900" telephone number based upon selected factors.

(1) The registration and public notification provisions of this section are applicable to every person described in these sections, without regard to when his or her crimes were committed or his or her duty to register pursuant to this section arose, and to every offense described in these sections, regardless of when it was committed.

(m) This section shall become operative on July 1, 1995, and shall become inoperative on January 1, 1999, and as of that date is repealed unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 401. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 290 of the Penal Code, and (3) this bill is enacted after AB 401, in which case Section 290 of the Penal Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 401, at which time Section 2.5 of this bill shall become operative.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000),

Reimbursement shall be made from the State Mandates Claims Fund.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to authorize law enforcement officers to disclose the identities and locations of sex offenders to preserve the public safety, it is necessary for this act to take effect immediately.

EXHIBIT B
RECEIVED
FEB 09 1998
COMMISSION ON
STATE MANDATES

February 6, 1998

Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of January 8, 1998 the Department of Finance has reviewed the test claim submitted by the County of Tuolumne (claimant) asking the Commission to determine whether specified costs incurred under Chapter No. 908, Statutes of 1996, (AB 1562, Alby), are reimbursable state mandated costs (Claim No. CSM-97-TC-15 "Sex Offenders: Disclosure by Law Enforcement Officers"). Commencing with page 2, paragraph 2, of the test claim, claimant has identified that Chapter No. 908, Statutes of 1996, adds new public disclosure requirements on local law enforcement agencies, which it asserts are reimbursable state mandates.

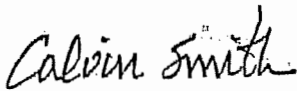
As the result of our review, we have concluded that we are unable to provide a recommendation on the merits of the claim at this time. Accordingly, pursuant to Section 1183.01(b)1 of the Commission's regulations, we are responding within 40 days of receipt of your letter to advise you that, at this time, we intend to oppose the finding of a reimbursable mandate in the statute which forms the basis of this claim and request that the Commission find the claim to be "disputed" for the purposes of the timelines in the Section. Accordingly, this letter constitutes our request for an extension of time for good cause to file our opposition to the claim. We believe that the fact that the issues in this claim require additional research to compare the basis of this test claim to applicable federal laws satisfies the "good cause" criterion on Section 1181.1(g)1 of the Commission's regulations. That Section provides that "good cause" may include, but is not limited to, the following factors: (1) the number of complexity of the issues raised; (2) whether a party is new to the case, or the necessity for other counsel; (3) whether the individual responsible for preparing the document has other time-limited commitments during the affected period; (4) whether the individual responsible for appearing at the hearing has other time limited commitments; (5) illness of a party; (6) a personal emergency; (7) a planned vacation which cannot reasonably be rearranged and/or which was not reasonably expected to conflict with the due date; (8) a pending public records request; and (9) any other factor which in the context of a particular claim constitutes good cause. Good cause may be established by a specific showing of other obligations involving deadlines which as a practical matter preclude filing the document by the due date without impairing quality. If the Commission makes a finding that the claim is

disputed, we would plan to submit our filing within 139 days from the date the test claim was filed, or no later than May 18, 1998, as required by Section 1183.01(b)1 of the Commission's regulations.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your January 8, 1998 letter have been provided with copies of this letter via either United States Mail or, in the case of other state agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst, or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,



S. CALVIN SMITH
Program Budget Manager

Attachments

PROOF OF SERVICE

Test Claim Name: "Sex Offenders: Disclosure by Law Enforcement Officers"

Test Claim Number: CSM-97-TC-15

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On February 6, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention: Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service

C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles
Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino
Office of Auditor / Controller / Recorder
Attention : Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates
Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

County of Tuolumne
Ms. Sylvia Divita, Employee Relations
Technician
28 North Lower Sunset Drive
Sonora, CA 95370

Mr. Steve Kiel
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814

Mr. Paul Minney
Girard & Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

Mr. Steve Smith, CEO
Mandated Cost Systems
2275 Watt Avenue, Suite C
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 6, 1998 at Sacramento, California.

Richelle Deremo

Richelle Deremo

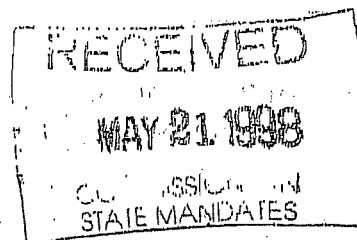
DEPARTMENT OF FINANCE

915 L STREET
SACRAMENTO, CA 95814-3708

EXHIBIT C



May 19, 1998



Ms. Paula Higashi
Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814

Dear Ms. Higashi:

This is a follow-up to our letter of February 6, 1998, regarding the test claim submitted by the County of Tuolumne based on Chapter No. 908, Statutes of 1996 (AB 1562, Alby). This claim has been given the title "Sex Offenders: Disclosure by Law Enforcement Officers" and assigned the number CSM-97-TC-15. Our February 6, 1998 letter requested that the claim be deemed "disputed" for purposes of the timelines set forth in Chapter 945, Statutes of 1995 (SB 11) and in Section 1183.01 of the Commission's regulations. The Commission granted that request and an extension of time until May 18, 1998, to file our recommendation on the merits of the claim.

As the result of our further review of the claim, we have concluded that although Chapter 908/96 may result in additional costs to local entities, these costs are not reimbursable because Chapter 908/96 implements a federal law. More specifically:

1. Section 17556(c) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the statute or executive order implemented a federal law or regulation and resulted in "costs mandated by the federal government," unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
2. Section 17513 of that Code defines "cost mandated by the federal government" as "...Any increased costs incurred by a local agency or school district after January 1, 1973, in order to comply with the requirements of a federal statute or regulation." "Costs mandated by the federal government" includes costs resulting from enactment of a state law or regulation where failure to enact that law or regulation to meet specific federal program or service requirements would result in substantial monetary penalties or loss of funds to public or private persons in the state. "Costs mandated by the federal government" does not include costs which are specifically reimbursed or funded by the federal or state government or programs or services which may be implemented at the

option of the state, local agency, or school district. H.R. 2137, 104th Congress ("Megan's Law") requires that "the designated State law enforcement agency and any local law enforcement agency authorized by the State agency shall release relevant information that is necessary to protect the public concerning a person required to register under this section."

In addition, many of the provisions cited in the test claim as "reimbursable state mandated provisions" were already required in statute prior to Chapter 908/96. For example, the test claim cites that Penal Code §290 (a) 1 was amended to require every sex offender to register with the chief of police or county sheriff in which he or she is domiciled within 14 days of coming into the city or county, and to update the registration annually, for the rest of his or her life, within 10 days of his or her birthday. However, this requirement was in Penal Code §290 (a) 1 prior to Chapter 908/96.

If you have any questions regarding this letter, please contact James A. Foreman, Principal Program Budget Analyst at (916) 445-8913 or James Apps, state mandates claims coordinator for the Department of Finance, at (916) 445-8913.

Sincerely,

Calvin Smith

S. CALVIN SMITH
Program Budget Manager

PROOF OF SERVICE

Test Claim Name: "Sex Offenders: Disclosure by Law Enforcement Officers"

Test Claim Number: CSM-97-TC-15

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 8th Floor, Sacramento, CA 95814.

On May 19, 1998, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to state agencies in the normal pickup location at 915 L Street, 8th Floor, for Interagency Mail Service, addressed as follows:

A-16

Ms. Paula Higashi, Executive Director
Commission on State Mandates
1300 I Street, Suite 950
Sacramento, CA 95814
Facsimile No. 445-0278

B-8

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

B-29

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

SB 90 Service

C/O David M. Griffiths & Associates
Attention: Allan Burdick
4320 Auburn Boulevard, Suite 200
Sacramento, CA 95841

County of Los Angeles

Department of Auditor-Controller
Kenneth Hahn Hall of Administration
Attention: Leonard Kaye
500 West Temple Street, Suite 525
Los Angeles, CA 90012

County of San Bernardino

Office of Auditor / Controller / Recorder
Attention : Marcia Faulkner
222 West Hospitality Lane, Fourth Floor
San Bernardino, CA 92415 - 0018

Wellhouse and Associates

Attention: David Wellhouse
9175 Kiefer Boulevard, Suite 121
Sacramento, CA 95826

County of Tuolumne

Ms. Sylvia Divita, Employee Relations
Technician
28 North Lower Sunset Drive
Sonora, CA 95370

Mr. Steve Kiel
California State Association of Counties
1100 K Street, Suite 101
Sacramento, CA 95814

Mr. Paul Minney
Girard & Vinson
1676 N. California Blvd., Suite 450
Walnut Creek, CA 94596

Mr. Steve Smith, CEO
Mandated Cost Systems
2275 Watt Avenue, Suite C
Sacramento, CA 95825

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on May 19, 1998, at Sacramento, California.

Richelle Deremo
Richelle Deremo

State of California

COMMISSION ON STATE MANDATES

1300 I Street, Suite 950
 Sacramento, CA 95814
 (916) 323-3562
 CSM 1 (2 91)

TEST CLAIM FORM

For Official Use Only

RECEIVED
 JUL 14 1999
 COMMISSION ON
 STATE MANDATES

Claim No. 97-TC-15

Local Agency or School District Submitting Claim

County of Tuolumne

Contact Person

Telephone No.

Allan Burdick (David M. Griffith & Associates, Ltd.)

(916) 485-8102

Fax (916) 485-0111

Address

4320 Auburn Blvd., Suite 2000
 Sacramento, CA 95841

Representative Organization to be Notified

California State Association of Counties

This test claim alleges the existence of a reimbursable state mandated program within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within the chaptered bill, if applicable.

Chapters 908 and 909, Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, 822 of 1997,

Chapters 485, 550, 927, 928, 929 and 930, of 1998

Penal Code, Sections 290 and 290.4

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

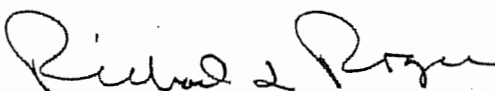
Telephone No.

Richard L. Rogers, Sheriff

(209) 533-5815

Signature of Authorized Representative

Date



7/7/99

**BEFORE THE
COMMISSION ON STATE MANDATES**

Amended Test Claim of:
County of Tuolumne

Sex Offenders: Disclosure by Law Enforcement Officers ("Megan's Law")
97-TC-15

Chapter 908, Statutes of 1996
Chapter 909, Statutes of 1996
Chapter 17, Statutes of 1997
Chapter 80, Statutes of 1997
Chapter 817, Statutes of 1997
Chapter 818, Statutes of 1997
Chapter 819, Statutes of 1997
Chapter 820, Statutes of 1997
Chapter 821, Statutes of 1997
Chapter 822, Statutes of 1997
Chapter 485, Statutes of 1998
Chapter 550, Statutes of 1998
Chapter 927, Statutes of 1998
Chapter 928, Statutes of 1998
Chapter 929, Statutes of 1998
Chapter 930, Statutes of 1998

Penal Code Sections 290 and 290.4

AUTHORITY FOR THE CLAIM

The Commission on State Mandates has the authority pursuant to Government Code section 17551(a) to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 Article XIII B of the California Constitution." The County of Tuolumne is a local agency as defined in Government Code Section 17518.

STATEMENT OF THE CLAIM

A. MANDATE SUMMARY

Penal Code, Sections 290 and 290.4 were amended by Chapter 908, Statutes of 1996 authorizing law enforcement officers to disclose information regarding sex offenders that is necessary to protect the public, which may include the identities and location of these offenders, under

specified circumstances. The statute requires local law enforcement agencies to disclose and provide, via electronic medium, information regarding sex offenders to the public under specified circumstances.

Law enforcement agencies are defined by the statute to mean any of the following: municipal police department; sheriff's department; district attorney's office; county probation department; Department of Justice; Department of Corrections; Department of the Youth Authority; Department of the California Highway Patrol; or the police department of any state university, state college, or community college.

This claim contends that Penal Codes Sections 290 and 290.4 as amended by Chapter 908, Statutes of 1996 imposes a reimbursable state-mandated local program by requiring local law enforcement agencies to provide additional information to the public, which may include the identities and locations of these sex offenders, via electronic medium. The statutes also increase the local law enforcement agency's data collection, maintenance and reporting requirements.

After the filing of the subject test claim, a substantial number of statutes have been passed which have amended the content of Penal Code, Sections 290 and 290.4, and this test claim is amended to include those statutes including: Chapter 908, Statutes of 1996, Chapter 909, Statutes of 1996, Chapter 17, Statutes of 1997, Chapter 80, Statutes of 1997, Chapter 817, Statutes of 1997, Chapter 818, Statutes of 1997, Chapter 819, Statutes of 1997, Chapter 820, Statutes of 1997, Chapter 821, Statutes of 1997, Chapter 822, Statutes of 1997, Chapter 485, Statutes of 1998, Chapter 550, Statutes of 1998, Chapter 927, Statutes of 1998, Chapter 928, Statutes of 1998, Chapter 929, Statutes of 1998, Chapter 930, Statutes of 1998. Although the content of the two statutes has been changed, the obligations and responsibilities of law enforcement to provide information to the public concerning registered sex offenders has not changed in any substantive manner. Penal Code Sections 290 and 290.4 are presently constituted as set forth in Exhibit 1, attached hereto and incorporated herein by reference.

B. MANDATED ACTIVITY

Prior to the enactment of Sections 290 and 290.4 of the Penal Code, specified sex offenders were required to comply with certain registration procedures. The amendments imposed by Chapter 908, Statutes of 1996 however add new public disclosure requirements on local law enforcement agencies which did not exist under prior law.

The intent of the legislature in passing this legislation was to protect the safety and general welfare of the people of this state by providing registration of sex offenders pursuant to Sections 290 and 290.4 of the Penal Code and to provide public notice of the presence of certain high-risk sexual offenders who are about to be released or who already reside in the communities in this state.

Section 290 of the Penal Code was amended to require that every sex offender described by Section paragraph (2) of the Penal Code register with the chief of police of the city in which he or she is domiciled or with the sheriff of the county if he or she is domiciled in an unincorporated

area within a prescribed amount of time within coming into any city, county or city and county, to update their registration annually 10 days of his or her birthday, and to verify his or her address. This provision is applicable for the entire life of the sex offender or while they reside in the State of California.

Sexually violent predators must update their address every 90 days. If an individual has no residence address, his or her registration must be updated every 90 days.

Furthermore, for all persons required to be registered on or before January 1, 1997, is required to be notified of the reduction in time for registration from 14 days to 5 days. (Penal Code, Section 290 (1)(1).)

The registration consists of: a written statement signed by the person, giving information as may be required by the Department of Justice, fingerprints and photos of the person, a license plate number of any vehicle owned by or registered in the name of the person, and copies of adequate proof of residence. Within three days, the registering law enforcement agency must forward this information to the Department of Justice.

When a sex offender moves or changes addresses, he or she must notify the local law enforcement agency in which they were already registered within 5 days. That agency must then transmit this information to the Department of Justice who will then forward appropriate registration data to the law enforcement agency or agencies having local jurisdiction of the new place of residence.

Penal Code, Section 290(d)(6) also requires law enforcement agencies to destroy all records specifically relating to the registration when the person has had their records sealed under the procedures set forth in Section 781 of the Welfare and Institution Code.

Prior law required registration or certain sex offenders, however the reporting and renewal time was 30 days. This statute shortened the time to 14 days, and then to 5 days. The local law enforcement agency or agencies with whom the offender is registered must provide a written notice notifying them of the two changes in the registration period.

Penal Code, Section 290(m) also gives law enforcement officers the authority to provide any of the information specified in paragraph (4) of this subdivision if they believe that a child or other person may be at risk from a sex offender convicted of a crime listed in paragraph (1) of this subdivision (a) of Section 290.4. If a law enforcement agency discloses information it must include, with the disclosure, a statement that the purpose of the release of the information was to allow members of the public to protect themselves and their children from sex offenders. (Penal Code, Section 290(m)(5).)

Paragraph (a)(4)(A) of Section 290.4 of the Penal Code was amended to require law enforcement agencies to make CD-ROM or other electronic medium data provided by the State Department of Justice by available for public viewing on or before July 1, 1997. The CD-ROM or other electronic medium is to be distributed by the Department of Justice on a monthly basis to each county, municipal police department of cities with a population more than 200,000, and each law enforcement agency listed in subparagraph (I) of paragraph (1) of subdivision (n) of Section 290.

Additional copies of the CD-ROM can be obtained at additional cost to the local agency.

Prior to allowing the public to view the information, applicable law enforcement agency must obtain identification and a signed statement from the applicant. The statutes also requires that the signed statement be maintained in a file by the law enforcement agency's office.

C. SPECIFIC STATUTORY SECTIONS THAN CONTAIN THE MANDATE

The provisions of Sections 290 and 290.4 of the Penal Code, impose a reimbursable state mandate on the County of Tuolumne. The primary reimbursable state mandated provisions can be found in the following sections of those sections:

- Penal Code 290 (a) (registration requirements)
- Penal Code 290 (o) (record retention requirements)
- Penal Code 290 (b)(2), (e)(3), (f)(1) (reporting requirements to DOJ)
- Penal Code 290 (d)(5) (records destruction requirement)
- Penal Code 290(f) (notification of change of address)
- Penal Code 290 (l)(1) (noticing requirements)
- Penal Code 290 (m) (disclosure of info to public)
- Penal Code 290.4 (a)(4)(A) (public access to data on CD-ROM & file maintenance)

The County also wishes to notify the Commission on State Mandates that, while the above sections contain the most explicit language mandating new reimbursable requirements on local agencies, and specifically upon local agencies such as the County of Tuolumne, all of the other provisions (subsections) of Sections 290 and 290.4 of the Penal Code are to be included in this test claim as clarifying and/or adding requirements to those principal sections.

COSTS MANDATED BY THE STATE

Government Code section 17514 defines "costs mandated by the state" as:

Any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

All of the criteria specified in Section 17514 for finding costs mandated by the state have been satisfied. Because Chapter 908, Statutes of 1996 was adopted by the legislature as "... an urgency statute, necessary for the immediate preservation of the public peace, health, or safety within the meaning of article IV of the Constitution...", the County of Tuolumne has incurred increased costs after September 25, 1996 as a result of the additional as well as a higher level of service provided as mandated by Chapter 908, Statutes of 1996.

COST ESTIMATES

1. Implementation Costs

The following is an estimate of the costs incurred by the County in implementing the program during the 1996-97 fiscal year and maintaining the program during the 1997-98 fiscal year.

A. Program Implementation

<u>Staff Expense</u>	<u>Materials Cost</u>	<u>Reimbursable Activities</u>
\$1,040	\$*TBD ¹	Develop agency Policy Orders/Statements adopting new responsibilities and procedures to all staff
\$1,213	\$*TBD	Providing staff training regarding new procedures and technology
\$*TBD	\$*TBD	Purchase & install hardware necessary to operate electronic data provided by the Department of Justice
\$85	\$15	Develop notices and forms
\$105	\$1,450	Purchase & installation of computer with CD-ROM capacity
\$35	\$*TBD	Programming & loading of applicable software
\$*TBD	\$*TBD	Purchase of CD-ROM from DOJ
\$2,478	\$1,465	Subtotals
	\$3,943	Total Estimated 1996-97 costs

B. On-going Costs

The following is a summary of the estimated costs that will be incurred by the County in operating the program during the 1997-98 fiscal year.

¹ "*TBD" means costs have yet to be determined.

<u>Staff Expense</u>	<u>Materials Cost</u>	<u>Reimbursable Activities</u>
\$525	\$*TBD	Verify current list of sex offenders and addresses
\$98	\$*TBD	Input data into data base DOJ uses and transmit to DOJ
\$42	\$*TBD	Make any edit corrections necessary
\$700	\$*TBD	Notify all sex offenders of new reporting requirements
\$700	\$*TBD	Notify other law enforcement agencies when sex offender is moving to their jurisdiction
\$14	\$*TBD	File and store all records specifically relating to the registration when the person has had records sealed under procedures set forth in Welfare and Institutions Code, Section 781.
\$1,400	\$*TBD	Respond to requests for information and assistance
\$700	\$*TBD	Screen applicants requesting data. Gather necessary identification and documentation.
\$140	\$*TBD	Quarterly, then monthly, update of data from DOJ
\$120	\$*TBD	Evaluate program & modify if needed
\$280	\$*TBD	New registrant entry
\$4,824	\$*TBD	Subtotals
	\$4,824	Estimated 1997-98 costs

CRITERIA FOR NOT FINDING COSTS MANDATED BY THE STATE

Government Code section 17556 specifies conditions for which the Commission shall not find costs mandated by the state, as defined in section 17514.

None of the following conditions contained in Government Code section 17556 apply to this test claim:

- (1) The claim is submitted by a local agency or school district which requested legislative authority for that local agency or school district to implement the program specified in the

statute, and that statute imposes costs upon that local agency or school district requesting the legislative authority.

- (2) The statute or executive order affirmed for the state that which had been declared existing law or regulation by action of the courts.
- (3) The statute or executive order implemented a federal law or regulation and resulted in costs mandated by the federal government, unless the statute or executive order mandates costs which exceed the mandate in that federal law or regulation.
- (4) The statute or executive order provides for offsetting savings to local agencies or school districts which result in no net costs to the local agency or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.
- (5) The statute or executive order imposed duties which were expressly included in a ballot measure approved by the voters in a statewide election.
- (6) The local agency or school district has the authority to level service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.
- (7) The statute created a new crime or infraction, eliminated a crime or infraction, or changed the penalty for a crime or infraction, but only for that portion of the statute relating directly to the enforcement of the crime or infraction.

The County does not have the authority to charge a service fee or assessment to pay for the mandated costs claimed in this test claim.

While Chapter 908 does make it a crime for sex offenders to not comply with the registration requirements, the County is not seeking reimbursement of any costs directly related to the enforcement of the registration requirements.

CLAIM REQUIREMENTS

The following elements of these claims are provided pursuant to Section 1183, Title 2, and California Code of Regulations:

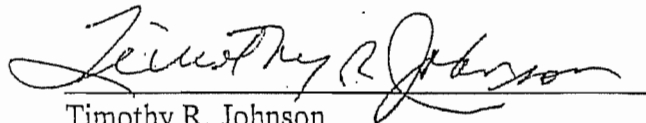
- Exhibit 1: Penal Code, Sections 290 and 290.4
- Exhibit 2: The Declaration of Richard L. Rogers, Sheriff, County of Tuolumne
- Exhibit 3: Chapter 908, Statutes of 1996
- Exhibit 4: Chapter 909, Statutes of 1996

- Exhibit 5: Chapter 17, Statutes of 1997
- Exhibit 6: Chapter 80, Statutes of 1997
- Exhibit 7: Chapter 817, Statutes of 1997
- Exhibit 8: Chapter 818, Statutes of 1997
- Exhibit 9: Chapter 819, Statutes of 1997
- Exhibit 10: Chapter 820, Statutes of 1997
- Exhibit 11: Chapter 821, Statutes of 1997
- Exhibit 12: Chapter 822, Statutes of 1997
- Exhibit 13: Chapter 485, Statutes of 1998
- Exhibit 14: Chapter 550, Statutes of 1998
- Exhibit 15: Chapter 927, Statutes of 1998
- Exhibit 16: Chapter 928, Statutes of 1998
- Exhibit 17: Chapter 929, Statutes of 1998
- Exhibit 18: Chapter 930, Statutes of 1998

CLAIM CERTIFICATION

I declare under penalty of perjury that the statements made in this document are true and complete to the best of my personal knowledge and as to all other matters, I believe them to be true and complete based upon my information or belief.

Executed this 8 day of July, 1999, at Sonora, California.

A handwritten signature in cursive script, reading "Timothy R. Johnson", written over a horizontal line.

Timothy R. Johnson
Auditor-Controller, County of Tuolumne
2 South Green Street
Sonora, CA 95370
Telephone: (209) 553-5551
Fax: (209) 533-5627

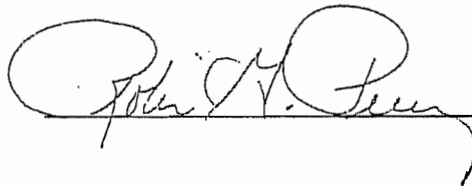
PROOF OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento, and I am over the age of 18 years and not a party to the within action. My place of employment is 4320 Auburn Blvd., Suite 2000, Sacramento, CA 95841.

On July 14, 1999, I served the Amended Test Claim of the County of Tuolumne, 97-TC-15, *Sex Offenders: Disclosure by Law Enforcement Officers ("Megan's Law")* and Exhibits Volumes I through IV, inclusive, by placing a true copy thereof in an envelope addressed to each of the persons listed on the mailing list, and by sealing and depositing said envelope in the United State mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed this 14th day of July, 1999 at Sacramento, California.



A handwritten signature in cursive script, appearing to read "John M. Lee", is written over a horizontal line.

MAILING LIST

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